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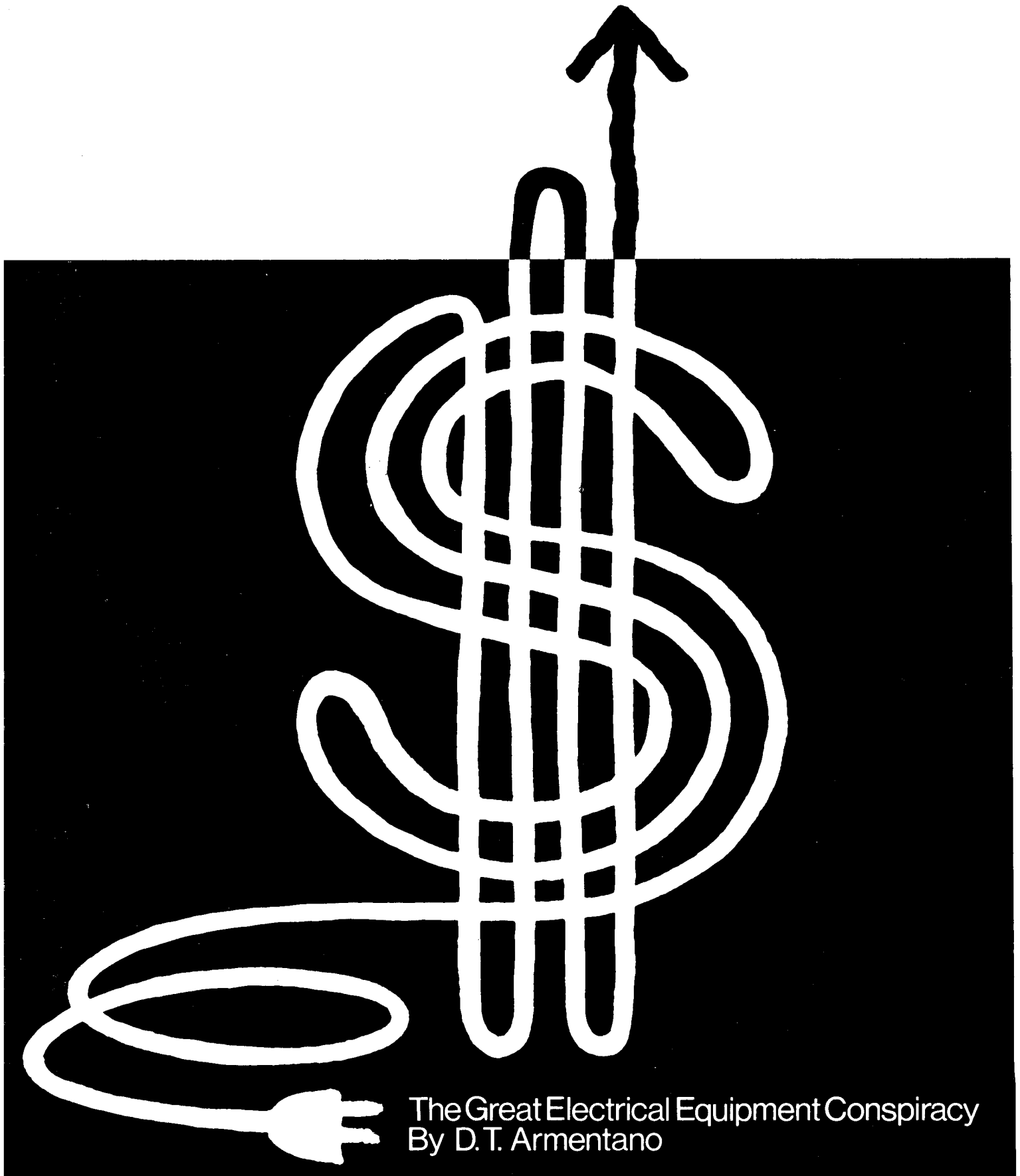

The Great Electrical Equipment Conspiracy
By D.T. Armentano

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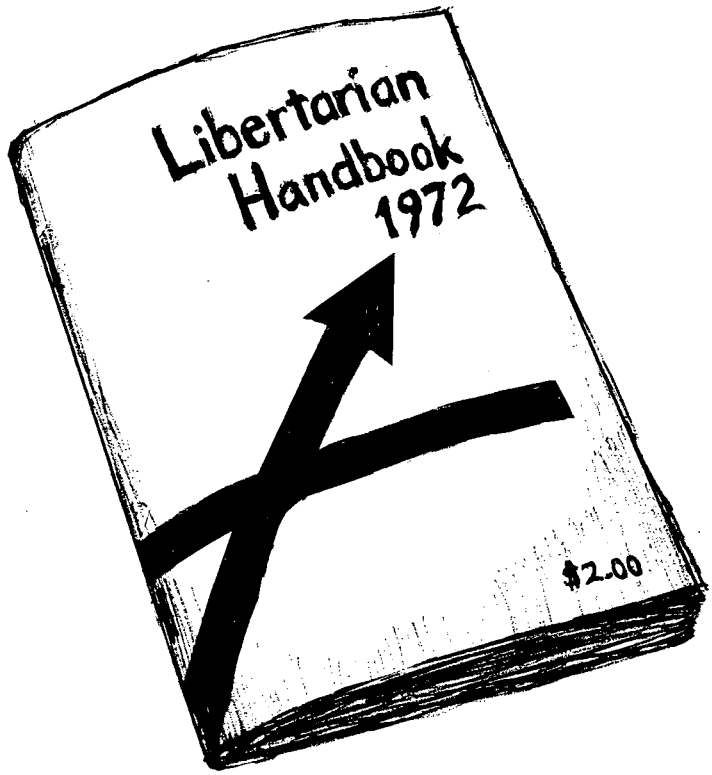

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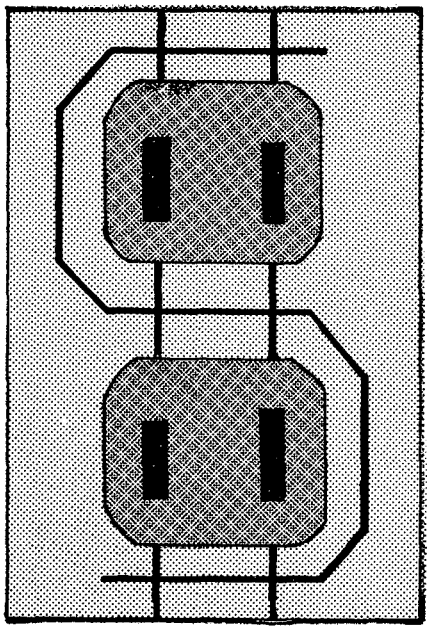
the great electrical equipment conspiracy

D. T. ARMENTANO



Undoubtedly the most celebrated price fixing antitrust case of modern times is the electrical equipment manufacturers price conspiracy, decided in 1961 (1). Involved were some of the nation's largest and most prestigeous firms, such as General Electric, Westinghouse, Allis-Chalmers, Federal Pacific, I-T-E Circuit Breaker, Carrier, and many others. The charges: that various employees of said firms had, between 1956 and 1959, combined and conspired to "raise, fix, and maintain" the prices of insulators, transformers, power switchgear, condensors, circuit breakers, and various other electrical equipment and apparatus involving an estimated $1.7 billion worth of business annually. (2)

A series of Philadelphia grand jury indictments was returned during 1960. After much discussion between the defendants and the Department of Justice, the firms were allowed to plead guilty to some of the more serious charges, and *nolo contendere* to the rest. On 6 February, 1961, Judge Ganey sent seven executives off to jail, gave 23 others suspended jail sentences, and fined the firms involved nearly $2 million. Subsequent triple damage suits brought against the equipment manufacturers by the TVA and private firms that had been "overcharged", increased the financial penalty many-fold. And so ended the most publicized price conspiracy in all business history.

INDISPUTABLE EVIDENCE

The fact that there were price "meetings" among various electrical equipment producers between 1956 and 1959 was indisputable. The meetings were a "way of life" in the industry. (3) Some of the meetings were little more than hastily called "gripe" sessions where the various firm representatives complained about price discounting and foreign competition. But others were more sophisticated and, apparently, involved the determination and application of secret bidding formulaes and the allocation of market business. Certainly the most incredible aspect of the conspiracy was not the price meetings but the absolute disclaimer by top General Electric and Westinghouse brass of any knowledge of any "conspiracy." The executives actually involved in the meetings took the thrust of the financial and social penalties.

WHAT IS PRICE FIXING?

If an "agreement" to fix prices is price fixing, then the electrical manufacturers were certainly guilty of price fixing and the issue is a dead one. Or if "tampering with price structures" constitutes price fixing, then these meetings were illegal and in clear violation of the Sherman Act. But for the purposes of this discussion the important questions are not legal (or moral) *but economic.* Did the conspiracy in fact "raise, fix, and maintain" unreasonable prices as the 20-odd indictments charged? Did it "restrain, suppress, and eliminate" price competition with respect to the selling of various kinds of electrical machinery or apparatus? Did the conspiracy work to "cheat" buyers of the benefits of free competition?

PRICING PRACTICES

To comprehend correctly the issue of price conspiracy, one must understand the usual and normal pricing practices in this multi-product, oligopolistic industry. General Electric, Westinghouse, and to a lesser extent the smaller manufacturers sell hundreds of thousands of electrical products that have been "standardized" to a high degree by the industry's trade association. The products are sold out of huge catalogs where potential custumers may obtain a detailed description of the product and its suggested list price. Almost all of the catalog products are so-called "shelf" items which the huge manufacturers produce continuously and hold in inventory. When an order is received a computer fills the request and directs that the particular product be shipped from the closest warehouse to the customer.

IDENTICAL PRICES

Since the products produced by the electrical equipment manufacturers are almost identical, and all firms quote delivered prices, the selling prices for standardized shelf items is almost identical to all buyers. (4) Any price decrease by one seller – usually announced with a mimeographed price sheet to customers – is quickly matched by other sellers. On sealed bid business, the price cut is "announced" when the bids are opened. In any case, the pressure of the marketplace, i.e., the desire on the part of each manufacturer to keep or increase his customers, makes the new (lower) price the new catalog price, which is, again, nearly identical for all firms that want to be competitive." Although there may be recognized quality differences that eventually "sell" an order, it still appears that the price of the higher-qualified product must nearly equal its lower-qualitied competitor. The testimony of John K. Hodnette, executive vice-president of Westinghouse, illustrates the pricing procedures with respect to a shelf item, here electric meters(5):

> This is a standard item. It is the meter that goes on the outside of the house that measures the use of current, protects the customer, tells the utility how much electricity has been used so that they can render a bill. We have been manufacturing these meters for 75 years. The selling price is approximately $16 .... About 60 days ago, I think it was, one of our competitors decreased the price of his watt-hour meter that corresponded to the one in question in Cleveland. When we learned of this, which we do very promptly, because they send out published catalogs, and our customers call them to our attention, so with the large number that are printed it is very easy matter to get a copy of a competitor's catalog and determine his prices, they reduced the price of the meter 30 cents per meter, when the new price list came out. We had just concluded the development of a meter which we thought was superior, better than any in the industry. We advised our field salespeople that we were not at that time planning to reduce our prices. We felt that we could sell a superior product at a higher price. We very soon learned that customers would not pay us the price, and many of them came to us and asked us to reduce our price to the same as those charged by competitors, so that they could continue to buy meters from us. (6)

Thus, Mr. Hodnette argued, competition produced identical prices. And the pricing procedure was no different with reference to "sealed bid" business. As he explained:

> The City of Cleveland and many other people recognize no brand preference or quality preference of one meter manufactured by one company as against another. In order to obtain business in any location, it is necessary that he be competitive with respect to price. This is total cost to the customer, whether he be the City of Cleveland or TVA, delivered to him at the site he wants it. He will not pay more .... In order for a manufacturer to get an order, he must quote a competitive price. He must quote a price that is equal to that of any of his competitors, delivered to the customer, and without any qualifications. [7]

From these remarks, it is clear that the normal forces of competition tended to produce identically quoted list prices in the electrical equipment manufacturers industry. To regard such identical quotations as per se evidence of collusion or conspiracy would be naïve and wrong. A final note on this extremely important issue from Ralph Cordiner, president of General Electric during this period, will suffice:

> In the course of these hearings, considerable attention has been devoted to the frequent identity of prices charged by competitors. It has been suggested that this identity, where it occurs, indicates a lack of competition, or even continuing conspiracy, among competing manufacturers. In all candor, may I say that identity of prices on standard, mass-produced items normally indicates no such thing. On the contrary, such price identity is the inevitable and necessary result of the force of competition—a force that requires sellers of standardized items to meet the lowest price offered in the market. The manufacturer who makes a product on a mass-produced basis and where minimum performance or quality standards are a part of the customer specifications will not long be in business if he prices that product above the market. The customers will purchase elsewhere unless his product has demonstrable additional values accepted by a reasonably large number of customers. The manufacturer who prices his products below the market will quickly discover there is no advantage to him because his competitors drop their prices to the price level he establishes ... It is simply not true that uniformity of prices is evidence of collusion. Nor is it true that uniformity of prices on sealed bids amounts to an elimination of price competition. The facts are that vigorous price competition continually takes place with one effect being a uniformity of catalog prices and, therefore, a uniformity of sealed bid quotations. Suppliers come to the conclusion—some possibly reluctantly—that if they want to continue to offer a particular product for sale that they will have to offer it at market prices equal to the lowest available from any supplier of any acceptable product. (8)

NON-STANDARDIZED ITEMS

Even if the product being sold is *not* a standardized shelf item, firms desiring to be "competitive" tend to meet the already established price. This procedure will hold even if a firm has not as yet manufactured the specialized electrical apparatus; it will quote the price of its competitor to announce to its potential customers that it *can* and *will* be competitive if orders should appear. Thus the "costs" in the short run or even before the product is actually made, are *irrelevant* to price determination. Again and again, the business men that testified before the Senate Subcommittee on Antitrust and Monopoly pointed out that market prices were determined by the firm willing to sell at the lowest price. But again and again, many of the Senators on the committee, particularly Senator Kefauver, refused to accept that explanation. Like many economists, Kefauver implied that competitive prices should have been determined by "costs"—completely ignoring the fact that buyers of electrical apparatus have no idea what producer "costs" are and care less. Note the following exchange of views with respect to "costs" and competition:

Senator Kefauver: How does it happen that eachone of these other companies comes up with exactly the same cost figures and decides what should be their price?

Mr. Hodnette: I have no idea what their costs are. The prices are determined by competition in the market place, not by cost. (9)

Or note the discussion below between Senator Kefauver and Mark W. Cresap, Jr., president of Westinghouse, with respect to the nearly identical prices ($17,402,300) submitted by different companies on a 500,000 kilo-watt turbine:

Senator Kefauver: . . . did you arrive at that price independently?

Mr. Cresap: Yes, sir.

Senator Kefauver: You figured it yourself?

Mr. Cresap: We arrived at that particular one on the basis of fact that General Electric Co. had lowered its costs for this type of machine, and we met it.

Senator Kefauver: You mean you copied it from G.E.?

Mr. Cresap: No, we met the price.

Senator Kefauver: Have you ever made one?

Mr. Cresap: Have we ever made—

Senator Kefauver: A 500,000 kilowatt turbine?

Mr. Cresap: We had not at that time, no sir.

Senator Kefauver: Have you made one yet?

Mr. Cresap: No.

Senator Kefauver: Has G.E. ever made one?

Mr. Cresap: Yes, they are making one.

Senator Kefauver: They have never made one, though?

Mr. Cresap: Well, this is the price that they established for this machine, and we met it.

Senator Kefauver: You mean you copied it?

Mr. Cresap: We didn't copy the machine. We met the price because it was the lowest price in the marketplace.

Senator Kefauver: In other words, you copied the figures exactly, $17,402,300, from General Electric?

Mr. Cresap: Senator, we had a higher price on the machine on our former book, and when they reduced, we reduced to meet them, to meet competition.

Senator Kefauver: If you never made one, how would you know how much to lower or how much to raise?

Mr. Cresap: You would know by the basis of how much you needed the business, what the conditions of your backlog was, what your plant load was, what your employment was, and what you thought you had to do in order to get the business.

Senator Kefauver: In any event, you would not know whether you were making money or losing money on this bid, because you had never made one, and Mr. Eckert told us you had no figures on which to base this price. You just followed along with G.E. Is that the policy of your company?

Mr. Cresap: The policy of our company is to meet competitive prices, and this is the manner in which the book price on this particular machine was arrived at . . .

Senator Kefauver: Even if you lost money?

Mr. Cresap: Even if we lost money, if we needed the business to cover our overheads and to keep our people working . . .

Senator Kefauver: On something that you had never sold, had never made, and that you have not made yet, and they have not made one yet, their price is $17,402,300, the same as yours.

Mr. Cresap: They would have to be, Mr. Chairman, if we are going to be competitive. We cannot have a higher price than our competition.

Senator Kefauver: How about a lower price?

Mr. Cresap: If we had a lower price, I am sure they would meet it, if they wanted to get the business very badly. (10)

In summation, price identity may imply intense competition and a working out of the "natural forces of the market." Or it may imply collusion and conspiracy. The next section will determine what it *did* imply in this case.

THE EFFECTIVENESS OF CONSPIRACY

The essential question to be answered in this section is: did the electrical equipment manufacturers successfully conspire to raise, fix, and maintain prices? Did the meetings—which many executives admitted attending—actually fix the level of prices and price changes or did competition? Was the driving force behind price identity collusion or competition?
The most acceptable generalization concerning the nature of the price conspiracy meetings must be that they were a failure, as one executive rather disgustedly put it, "a waste of time." Without exception, every witness queried before the Senate Subcommittee on Antitrust and Monopoly stated that the meetings were *not* effective at all. (Why they attended will be discussed below.) Because this particular aspect of the conspiracy is so important—and so neglected—it must be documented thoroughly with direct testimony. The following exchange concerns "collusion" on *medium turbine* sales:

Senator Kefauver: How would it work out? Just tell us how it worked.

Mr. Jenkins: It didn't work very good.

Senator Kefauver: It looks as if it has the possibilities of working good.

Mr. Jenkins: The thing that is important, this is a dog-eat-dog business and everybody wanted it. There has never been enough business. (11)

And again, Kefauver with Jenkins on the end of the price meetings on *turbines:*

Senator Kefauver: When did they break up?

Mr. Jenkins: In early 1959.

Senator Kefauver: What happened then to cause this cessation?

Mr. Jenkins: It was a waste of time and effort. There was very little business. We were at the bottom of a buying cycle. Everybody wanted every job, and it was of no value. (12)

The following exchange concerns price "collusion" on *electrical condensors:*

Senator Blakley: If I understand, then, if your competitors were of the same mind as you, then it would be a general feeling that these meetings for the purpose of fixing prices would be in order; is that the way to interpret it?

Mr. Bunch: An attempt may have been made to fix these prices, but it was entirely unsuccessful. (13)

The following exchange concerns price "collusion" on *small turbine generators:*

Mr. Flurry: What was decided at that meeting with respect to price level?

Mr. Sellers: This meeting consisted of perhaps—I say "perhaps"—there were six manufacturers in this small turbine generator business represented. This was recognition of the fact that the prior bid price discussions which had been going on among the manufacturers *was so ineffective as to be rather useless,* and to try to determine whether or not people were serious in this endeavor or whether—well, it had become so useless that there was a question as to whether you should continue, and this was a meeting to discuss that. Also, an effort to stabilize the market at some place within a few percent of a published price, rather than 10 or 15 percent, where the market had drifted. Again, the meeting *was so ineffectual as far as I am concerned, because it promptly all fell apart.* This rugged individual type of business that we are in simply ignored—I will put it a different way. The forces that were coming about from lack of volume and the pressure that was on a manufacturer to get volume negated any price discussion. It just did not amount to anything. (14) Emphasis added)

The following exchange concerns meetings and alleged price collusion with respect to *medium voltage switchgear:*

Mr. Flurry: I understood you to say that this broke off some time before 1959?

Mr. Hentshel: That is right, sir.

Mr. Flurry: What was the cause of that break-off?

Mr. Hentshel: Basically the thing just wasn't working. In other words, everybody would come to the meeting, the figures would be settled, and *they were only as good as the distance to the closest telephone before they were broken.* In other words, the thing just wasn't working. (15) (Emphasis added)

The following exchange concerns meetings that were designed to set and maintain the prices of *power transformers:*

Mr. Ferrall: What do you mean, Mr. Smith, when you say you did not know whether any good would come of it or not?

Mr. Smith: Well, I meant by that whether there was anything done at the meeting with competitors which would in any way improve the price situation. Past meetings with competitors had been rather unfruitful in that respect.

Mr. Ferrall: You mean you did not know whether they would abide by their agreements?

Mr. Smith: I don't know whether you can say that we had real agreement at any time . . . (16)

Mr. Smith: (continuing) My experience in meeting with competitors, as I have said before, indicated to me that it was a rather fruitless endeavor. It might be one day, it might be two days, after a meeting, before jobs would be bid all over the place, and there seemed to be no real continuity that came out of those meetings in the way of stabilizing prices at any level. (17)

And again with Mr. Smith of General Electric with respect to "price agreements" on *power transformers:*

Senator Carroll: In other words, you reached agreement that there could be some stabilization?

Mr. Smith: There could be, but we agreed upon no stabilization.

Senator Carroll: I understand that. I am not asking you to commit yourself, but there was this general agreement that you could stabilize?

Mr. Smith: General understandings that it would probably be best if it was possible.

Senator Carroll: Did you remove the threat of price cutting?

Mr. Smith: No, sir.

Senator Carroll: Was there any price cutting after that;

Mr. Smith: Surely, sir.

Senator Carroll: Did it continue?

Mr. Smith: Yes, sir . . .

Senator Carroll: (continuing) I think I have asked this question, but I will ask it again. Do the records then reflect that you got some price stabilization after that time? I mean, not the records, but the practice, your profits.

Mr. Smith: The price curves which were maintained by the power transformer department all the way through this whole period is one of this kind of picture, up and down all the time.

Senator Carroll: Did it improve after your last conference, the conference in 1958? Did it improve in 1958 after the two presidents got together?

Mr. Smith: No, sir, not to amount to anything.

Senator Carroll: Did it improve any in 1959?

Mr. Smith: It got worse in 1959. (18)

The following exchange again concerns price meetings with respect to fixing prices on *power transformers:*

Senator Hruska: By and large, Mr. Ginn, you have had considerable experience in the business of meetings with competitors. How effective were those meetings to get the job done that they purported to have as an objective?

Mr. Ginn: Senator, this is the way I will put it. *If people did not have the desire to make it work, it never worked. And if people had the desire to make it work, it wasn't necessary to have the meetings and violate the law.*

Senator Hruska: So that your preliminary discussions and meetings with competitors—

Mr. Ginn: *Were worthless . . . I think that the boys could resist everything but temptation.* No sir, I'll tell you frankly, Senator, I think if one thing I would pass on to posterity, that it wasn't worth it. *It didn't accomplish anything,* and all you end up with is by getting in trouble. (19) (Emphasis added)

And a final exchange with respect to the effectiveness of "fixing" *transformer* prices:

Mr. Rosenman: And you fixed prices, you participated in the fixing of prices?

Mr. McCollom: That is right.

Mr. Rosenman: Fixing of the book price—

Mr. McCollom: We discussed those in meetings.

Mr. Rosenman: But you maintain that there was no agreement as to these?

Mr. McCollom: We discussed these generally, and I say that there was no agreement, because *it didn't result in prices being quoted at those levels that were discussed.* There was just no evidence of any agreements in the actions that were taken by the parties in the meetings. There was no formal definite agreement in writing on this thing.

Senator Kefauver: None of it was in writing?

Mr. McCollom: There was no verbal agreement, just a discussion.

Senator Kefauver: Just a discussion of it.

Mr. McCollom: Just a discussion of it.

Senator Kefauver: Was there, or was there not, an understanding about what was going to be done?

Mr. McCollom: Well, *I think the results indicate that there was no understanding.*

Senator Kefauver: *I am not talking about results.* I am asking whether at the meeting there was an understanding about what was going to be done?

Mr. McCollom: Well there was a discussion of price levels 15% off book. I might have gone out of the meeting thinking the other people understood it; they might have gone out thinking I did; *but there was no action that supported any understanding of it,* that there was any understanding because it did not occur. It did not happen. (20) (Emphasis added)

SUMMARY AND CONCLUSIONS

Through the entire period of the conspiracy, the firms could not suspend price competition. Although there had been repeated *attempts* to fix, raise, and maintain prices, the attempts rather monotonously failed. Price agreement might last a day or two and "then somebody would break the line and there would be another meeting." (21) In most cases, in fact, the prime purpose of the meetings was an attempt to restore "agreements" that were being openly and regularly violated in the marketplace. In other instances, the meetings were an attempt by some firms to "get the line on prices," i.e., to find out what a competitor might do with his price in the near future. (22) Such information would allow a firm to bid just under its competitor and secure the desired business. As Mr. Raymond Smith, former general manager of the transformer division at General Electric, put it:

> . . .my prime objective was to find out whether the Westinghouse people had received any instructions from their people, and failing to do so, I thought the meeting was worthless. (23)

PRICE INFORMATION

Hard and fast evidence on *actual* prices and price changes during the period of the conspiracy is hard to uncover. The Bureau of Labor Statistics (BLS) indexes of wholesale prices show substantial increases for various kinds of electrical apparatus. Switchgear prices, forexample, increase from an index number of 112.7 in 1950 to 127.4 in 1952 to 135.1 in 1954, to 154.1 in 1956, to 172.8 in 1958, and to 176.6 in 1960. (24) Since there were "meetings" with respect to the prices of switchgear—at least during the latter part of the 1950's—the impression conveyed is that prices were rather routinely raised and maintained at "unreasonable" levels.

The impression conveyed by the BLS evidence is an altogether incorrect impression. The statistics are based on catalog prices; they do not necessarily relate to the *actual* prices being charged in the marketplace. The fact remains that all during the "conspiracy" period, switchgear sold at particular percentages off of book or catalog price. This "discounting" was particularly pronounced during the infamous "white sale" of 1954 and 1955, when switchgear was selling for as much as 45-50% off of book. (25) This "sale" was repeated in late 1957 and early 1958 when market prices were as much as 60% off of book. (26) Ironically, the entire purpose of the switchgear meetings was to "do something" with respect to the "unreasonably" *low* switchgear prices. The meetings ended in failure and were abandoned before the conspiracy was discovered by the Department of Justice. There was no effective price fixing in switchgear at all. (27)

PROFIT RATES

The fact that there was no effective price fixing in switchgear, or in many other electrical products, might be substantiated by an examination of profit data for some of the firms involved during the period of the "conspiracy." Although a positive relationship between "periods of conspiracy" and "unreasonable profit" would not prove cause and effect, the complete *lack* of any such relationship might be indicative of ineffectual price collusion. Indeed, if price conspiracy cannot produce "unreasonable" profit levels—and, thus, generate the misallocation of resources that so concerns the economists—why is it important at all? If collusion does not generate substantial profits, economists, for at least a generation, have made mountains out of molehills.

The 20 separate indictments returned by the grand jury in 1960 charged that a price conspiracy had been in effect in the electrical equipment manufacturers industry between 1956 and 1959. A comparison of the rates of return on both capital and sales for that period, with some previous period, is reproduced below for four of the most important firms involved in that conspiracy. (28)

Table 1

General Electric

Years	Profits on Capital	Profits on Sales
1950-1955	20.5%	5.9%
1956-1959	20.1%	5.8%

Table 2

Westinghouse

Years	Profits on Capital	Profits on Sales
1950-1955	10.8%	5.1%
1956-1959	7.0%	3.0%

Table 3

Allis-Chalmers

Years	Profits on Capital	Profits on Sales
1950-1955	11.3%	5.1%
1956-1959	6.6%	3.7%

Table 4

Carrier

Years	Profits on Capital	Profits on Sales
1950-1955	12.9%	4.4%
1956-1959	7.9%	3.5%

It can be observed from these tables that in *all* cases, without exception, the rates of return on capital and on sales were actually *lower* during the period of alleged conspiracy than during the previous period. (29) If the conspiracy were successful, the price and profit behavior of the firms involved certainly does not reflect that "success." More than likely, the conspiracy was a sad failure from the start to finish.

WHY DID THE CONSPIRACY FAIL?

To gain an understanding of why the conspiracy failed, it is necessary to examine two crucial elements of the electrical equipment manufacturers industry: the industry's cost structure and the nature of the demand for electrical apparatus.

Although there are thousands of firms that produce and sell electrical apparatus and machinery—and although entry remains relatively easy— (30) the important parts of the industry are dominated by a relatively few, extremely capital intensive firms. As might be expected, these firms are rather sophisticated innovators; and all maintain substantial research and development facilities at great expense. More important for our purposes, however, is the fact that the extremely high capital intensity, and the resultant scale economies, (31) generate pressures for "selective" *price cutting* when demand is slow to *gain volume.*

The demand for electrical equipment is derived almost equally from industrial firms and electric utility companies. Since a high proportion of the total demand for electrical equipment is associated with new construction, or new generating capacity on the part of utilities, it becomes extremely sensitive to money market conditions. In addition, since it is a demand for a (postponable) producer's durable good, it can be expected to display the violent instability commonly associated with the "feast or famine" capital goods industry. Both factors foretell an extremely cyclical demand for electrical apparatus.

Given the instability in the economy and in the money markets during the period 1955-1960, and given the cost structure of the equipment manufacturers, it is not at all surprising to discover that price competition was severe and that catalog prices were not being honored. Here were expensively equipped firms with huge overhead costs hungry for a volume of business that did not materialize at existing price levels; this volume simply had to be attracted. In such circumstances price cutting was inevitable. Although there is numerous testimony to support this view, (32), the remarks of George E. Burens, former division general manager of switchgear at General Electric, are indicative of the real situation:

> Everybody has their plant in shape. They have the facility. They have the organization. But they have no business. So, they are out grabbing. I think that is the thing. (33)

It was, indeed, the thing.

FURTHER DIFFICULTIES

Price fixing was also difficult because there were always competitors who did not compete on a national basis. When demand was flat or falling, electrical firms closer to potential customers might simply figure the cost of a particular job and quote a price to cover that cost. (34) Hence, price could be significantly different from national catalog prices, and "could be anywhere over the lot." In addition, there were so-called "tin makers" (firms that made "inferior" electrical equipment) that would make it a practice to underbid national competition, especially on sealed bid jobs. (35) Rarely would the non-national firms or the "tin makers" abide by any price agreement.

Further, there was the "problem" of price competition from the foreign firms. They could not be controlled directly, and they were not a part of the price conspiracy; accordingly, their pricing practices made it difficult—if not impossible—to raise, fix, and maintain prices on electrical equipment. For example, prices on certain turbo-generators were cut 20% when foreign competition entered the market, and meetings to "fix" that particular situation were "unsuccessful . . . quite unnecessary and very foolish." (36) The ability of such meetings to contain price competition under such circumstances was nil.

SUMMARY AND CONCLUSIONS

Price collusion was ineffective in the electrical equipment manufacturers industry because demand was unstable, economies of scale were substantial, competitors had different price and profit objectives, honesty and trust were non-existent, and foreign imports were (increasingly) important. Under such circumstances, a successful price conspiracy would have been nearly impossible. The Justice Department, it appears, with all its legal fuss, fines, and headlines, ended a nearly impotent arrangement.

The general meaning of this article should not be misunderstood. It is not being argued here that "price conspiracy" is impossible or that such a successful conspiracy might not work an "injury" to the buyers. What is being argued is (1) that the inherent market forces in a free market make most price conspiracies completely unworkable and (2) that a sampling of the most famous price fixing antitrust cases in history has revealed that they involved such unworkable conspiracies. (37) With these points in mind, the reader is invited to draw any appropriate policy conclusions.

NOTES AND REFERENCES

(1) Background information can be obtained from Richard Austin Smith, "The Incredible Electrical Conspiracy," *FORTUNE*, April and May 1961; John Fuller, *THE GENTLEMEN CONSPIRATORS* (New York: Grove Press, 1962); John Herling, *THE GREAT PRICE CONSPIRACY* (Washington: Robert B. Luce, Inc., 1962).

(2) Clarence C. Walton and Frederick W. Cleveland, Jr., *CORPORATIONS ON TRIAL: THE ELECTRIC CASES* (California: Wadsworth Publishing Company, Inc., 1964), p. 12.

(3) *Ibid,* p. 11. The best source of information about the conspiracy meetings is the Hearings on Administered Prices by the United States Senate Committee on the Judiciary, Subcommittee on Antitrust and Monopoly, *Price-Fixing and Bid-Rigging in the Electrical Manufacturing Industry*, Parts 27 and 28, 87th Congress, 1st session, April, May and June 1961.

(4) There was testimony to the effect that the Robinson-Patman Act made quantity discounts difficult. See *PRICE-FIXING AND BID-RIGGING* . . ., p. 17619.

(5) All the quoted testimony to follow in this article is taken from *PRICE-FIXING AND BID-RIGGING IN THE ELECTRICAL MANUFACTURING INDUSTRY*, unless otherwise indicated.

(6) *Ibid.*, p. 17430.

(7) *Ibid.*, p. 17431

(8) *Ibid.*, pp. 17672-17673

(9) *Ibid.*, p. 17438

(10) *Ibid.*, pp. 17628-17630.

(11) *Ibid.*, p. 16608. Mr. Jenkins was Sales Manager of medium turbine sales for Westinghouse.

(12) *Ibid.*, p. 16614

(13) *Ibid.*, p. 16639. Mr. Bunch was Manager of the condensor division of Ingersoll-Rand Company.

(14) *Ibid.*, p. 16669. Mr. Sellers was manager of the turbine generator division of the Carrier Corporation.

(15) *Ibid.*, p. 16884. Mr. Hentshel was general manager of the medium voltage switchgear department for General Electric.

(16) *Ibid.*, p. 16961. Mr. Smith was the general manager of the transformer division for General Electric.

(17) *Ibid.*, p. 16962.

(18) *Ibid.*, p. 17013, 17029.

(19) *Ibid.*, pp. 17069-17070. Mr. Ginn was vice president and general manager of the turbine division for General Electric.

(20) *Ibid.*, pp. 17376-17379. Mr. McCollom was the manager of the power transformer department for Westinghouse.

(21) *Ibid.*, p. 17883.

(22) *Ibid* ., p. 17523

(23) *Ibid.*, p. 17013.

(24) *Ibid.*, p. 17767.

(25) *Ibid.*, p. 16740.

(26) *Ibid.*, p. 17103.

(27) The same conclusion might be made with respect to the prices of "large circuit breakers". See George J. Stigler and James K. Kindahl, *THE BEHAVIOR OF INDUSTRIAL PRICES*, (New York: National Bureau of Economic Research, 1970), p. 31. See also, Jules Backman, *THE ECONOMICS OF THE ELECTRICAL MACHINERY INDUSTRY* (New York: New York University Press, 1962), especially Chapters 5 and 6.

(28)The tables are based on figures taken from *MOODY'S INDUSTRIAL MANUAL,* and from *PRICE-FIXING AND BID-RIGGING IN THE ELECTRICAL MANUFACTURING INDUSTRY,* Exhibits 54A, B, C, pp. 17960-17961.

(29) The profits might have been lower for a good many reasons; the 57-58 recession in the economy is the best candidate. The point here, however, is that the collusion did *not* generate monopoly profits.

(30) The *CENSUS OF MANUFACTURERS* reports that there were 7,066 "establishments" in the electrical machinery industry in 1958, compared with 3,970 in 1947.

(31) Walton and Cleveland, *CORPORATIONS ON TRIAL* p. 13

(32) See, for example, *PRICE-FIXING AND BID-RIGGING IN THE ELECTRICAL MANUFACTURING INDUSTRY,* p. 16614

(33) *Ibid.*, p. 16876

(34) *Ibid.*, pp. 16693-16694.

(35) *Ibid.*, p. 17472.

(36) *Ibid.*, pp. 16945, 17061,

(37) For additional examples refer to my forthcoming book *THE MYTHS OF ANTITRUST.*

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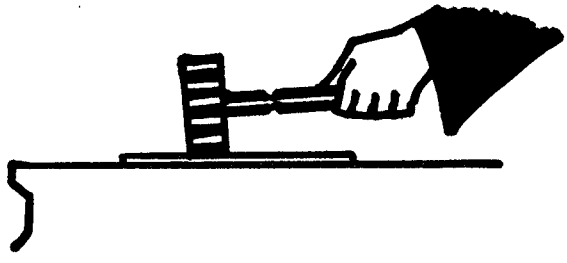
Prof. D.T. Armentano teaches economics at the University of Hartford. His article "Capitalism and the Antitrust Laws" appeared in the January 1972 REASON. His book THE MYTHS OF ANTITRUST, from which this article was drawn, will be published in May of this year by Arlington House, New Rochelle, N. Y.

"justice on trial"— revisited

tibor
machan

Last month REASON *presented a controversial article by Robert LeFevre attacking the conventional restitutional concept of justice and advancing a pacifist alternative. This month, associate editor Tibor Machan replies to LeFevre's arguments.*



Robert LeFevre of Rampart College has presented readers of *REASON* with a commentary concerning his understanding of the role of the concept of "justice." I take the liberty of capturing the theme of Mr. LeFevre's piece with some reservations—his essay covers a great deal, but it is introduced by the remark that its aim is "to explore the origins of the concept of justice." Besides this concept, however, LeFevre discusses the concepts of "government," "retaliation," "fairness," "nature " (from a supposed theological framework), "moral obligation," "enforcement," "protection," "free market," "retroactive justice," "imposition," "hell," "heaven," and "restitution." Of these only "justice" is provided with a definition; however, this definition is offered in a context of "ancient theology" and "theological literature," and thus it is unclear whether LeFevre wishes us to consider it a contextual definition pertaining to the epoch of history called "Babylonian" or perhaps even "primitive." The rest of the concepts are never defined, even though LeFevre alleges various properties, qualities, or features of them in order to make good certain of the claims he advances in his essay. Hopefully, then, the reader will have read the piece and can either recall his understanding of it and its theme or appreciate the difficulties I had and have in identifying what the piece was about.

The consequences of LeFevre's omission of direct quotations emerge very early in his essay. He tells us in the second paragraph that

> we think of justice as something that can be regained, once it has been lost. That is, many hold to the notion that when an exchange occurs which is not equitable, some element of force may rightfully be invoked in order to convert the non-equitable exchange into an equitable one.

It is most important to ask here, "Is what LeFevre is saying true? Do we think of justice in this way? Have we any guidance as to where we may find those who so think or at least read or hear evidence of their so thinking?" I do not think that as readers of LeFevre's essay we have such guidance from LeFevre, the one who is responsible to give it to us.

STATUS QUO JUSTICE

LeFevre says, "The fundamental concept of justice thus coming to us from its theological roots is that there is a straight line in nature which begins with the status quo." He continues, " . . . justice, then, can be defined as a mystical concept relating to the presumed rightness of the status quo, symbolized by a straight line found in the balance of nature." In support of these claims, which we shall focus on shortly, LeFevre mentions—but does not quote—Wigmore's "three-volume study, *PANORAMA OF THE WORLD'S LEGAL SYSTEMS*. This work is supposed to report that "the God of Justice (Maat), was often depicted in Egyptian art with scales at hand with which to weigh the good deeds and the evil deeds of the departing Ka (soul of man)." This, and some practice of the Mesa Verde Indians of the Four Corners area of Colorado, supposedly gives right to considering justice a mystical and theological concept. (Is this all that LeFevre gets out of Wigmore's three volumes? Or do we have here an instance of pleading one's case? I believe the latter is the case.)

Frankly, LeFevre's obvious attempt to discredit the concept of "justice" by identifying it with myth, theology, religion, and mysticism, simply won't do. Virtually all moral concepts—including the idea of the importance of the individual man and his freedom from coercion—can be identified with theology, etc., when the focus is upon historical *association*. The Bible, for example, makes a pitch for all kinds of contradictory virtues, some libertarian, some socialist, and so on. Religion was indeed the birthplace of many of man's attempts to conceptualize his own moral nature. (I believe it was Ayn Rand who remarked that religion is infant philosophy—and would add, I am sure, that we have grown up now, so let's do without.) Ludwig Feurerbach and many others have argued for a similar general interpretation of man's religious tendencies.

For all this it cannot, however, be derived that the concept of "justice" is necessarily connected with mysticism or God. Even mention of "an eye for an eye" won't help to prove that thesis; the concept has been shown to have emerged out of non-mystical contexts, also, as for instance in Western political theory. (Professor Robert Hartman of the University of Mexico notes that this notion is not so much an encouragement—to wit: "you *must* take an eye for an eye"—but the setting of a limit—i.e., "no more than an eye for an eye may be taken.")

So the smear work will have to wait; LeFevre did not pull it off. But let's return to the more substantive implications of LeFevre's early reference to justice and its supposed definition. Is it fundamental to the concept of "justice" that there is "a straight line in nature which begins with the status quo"? Without offering a detailed analysis of that concept, this question is not simple to answer—and I will not answer it in full. Suffice it to note that Leo Strauss, no small authority on the history of natural right and natural law theory, appears to thnk differently. He explains in his history of natural right(s) that the concept of "right"—alternately used for "just" within Greek and Roman law—emerges out of some Greek thinkers' attempt to differentiate between the *status quo's authority* and *nature's dictates*. Plato clearly gives a naturalist instead of conventionalist (status quo oriented) account of justice in *THE REPUBLIC*. Cicero and Aquinas do no less. While God or gods may appear in the thinking and even arguments of all these naturalists, it is standard history of intellectual thought that these thinkers attempt very seriously to eliminate reference to a super-natural God in their account of morality and the right principles of social existence. Aquinas, for example, maintained that it is reason which leads us to virtue and right. God enters the scene only after reason does its work. Later Grotius and Locke followed suit. And the proper source of moral and political truths is always reason (which grasps nature) not convention.

NATURE AND JUSTICE

LeFevre's claim that the concept of "justice" is fundamentally linked with nature "which begins with the status quo" is open to very serious challenge. For my (critical) purposes this will do. We turn now to whether "justice can be defined as a mystical concept . . . etc." Given the earlier objections to LeFevre's project, it appears now to be unwarranted to link justice with mysticism. Neither can it be made out that justice relates "to the presumed rightness of the status quo." This is because the idea of "balance is nature" need not, logically, symbolize the status quo. If anything, Strauss argues just the opposite: the status quo was expressed in the reliance on authority (originating in those who considered themselves representing the status quo), while justice was thought to be what nature dictated as *right*.

Thus, the principle that "no man ought to profit from doing wrong to another," giving rise to the feature of justice which entails retaliation against wrongdoers, is seen not as an expression of public or paternal (status quo) vengeance but *natural rightness*. Professor Herbert Morris argues eloquently for the same general view in his article "Persons and Punishment" (*THE MONIST*, October, 1968). He thinks that every man has a natural right to be punished as a consequence of his own actions—he is thereby experiencing the natural consequences of his own (wrong) doings. Morris believes that this is indeed a natural right.

MORAL OBLIGATION

I jump now to a point made midway through LeFevre's piece concerning the nature of moral obligation. First of all, LeFevre spends no time or effort on differentiating between moral duty and moral obligation. Playing fast and loose with these notions he feels safe in saying,

> If a man can conceivably have a moral obligation before he has assumed it, then we open a Pandora's box and can suggest, with equal validity, that he also has a moral obligation to see that everyone is fed, clothed, housed, educated, and so on, *ad nauseam*, for the good of the social whole.

But here again we must ask, "Is this true?"

Consider, first, that "moral obligation" is undefined and confused with "moral duty" (which appears earlier in the paragraph). Can we read it as "moral responsibility"? Must all moral responsibilities be assumed? Can we ask, on occasions, whether they *ought to* have been assumed? For instance, in the case of a person's moral responsibility to refrain from coercion? Or his moral responsibility to be honest, productive, etc.? Are these not responsibilities that every man ought to assume simply because *by nature* assuming them will be to his good? Thus the moral responsibility to take measures against actual agression and its likelihood (in the case of *those who have proven to be aggressors*) is one which some libertarians, especially Objectivists, have claimed that every person ought to assume and, in turn, live by. Furthermore, this responsibility ("obligation") cannot be identified by fiat as having "equal validity" to the others LeFevre lists.

It is precisely what is in question: whether self-responsibilities are on par with responsibilities we may have to others. Since the latter are "to others," libertarian theory argues that they must be assumed voluntarily by some explicit or implicit agreement, while the former are not so assumed, if at all. And, finally, LeFevre's qualification that such a moral obligation is on par with those which are designed "for the good of the social whole" is also gratuitous. Man could have moral obligations toward himself by his very nature (though he may fail to fulfill them or assume them) *and* not have such obligations "for the good of the social whole."

It appears that LeFevre is here trying to get mileage out of his identification of *natural* with *status quo*; he is making it appear as if natural rights, the source of the correct concept of "justice," really means "rights specified by society," whereas this is precisely what the qualification "natural" is designed to counteract.

Although I am not an anarcho-capitalist (see this issue's Special Supplement – Ed.), I know that LeFevre is wrong in believing that those who argue for free market retaliatory agencies have argued just how their "procedure is to maximize human well-being and bring about a state of freedom and peace." Dr. Murray N. Rothbard argues at length the details of just such a procedure in his *POWER AND MARKET*; Linda and Morris Tannahill do so, also, in *THE MARKET FOR LIBERTY*. So proponents of "rival'(?) free market retaliatory agencies" have "dealt with" what LeFevre asserts they have not dealt with. Naughty, naughty! Equating gangland mobs with such free market agencies must be done far more carefully than LeFevre does. Perhaps a point *can* be made, but surely it has not been made by LeFevre in this piece.

RETRIBUTION AND RETALIATION

LeFevre abounds in unsupported equivocations. To wit, he claims that those who link protection and retribution (note the switch from retaliation!) "accept government as the all-purpose problem-solving mechanism." Do they? Where is the proof? Where can we look for the evidence? LeFevre is no help to us. He simply asserts, without proof or evidence. Then when he claims that these unfortunate souls give up and simply accept an "admittedly evil and wrong" government, it is once again only a strawman quote which is offered to the reader.

LeFevre then goes on to tell us that while "protection is a free-market service . . . retaliation by its objective character (where? what is it?) is something only an agency of force can accomplish." I wonder how long a protection agency (bodyguard, etc.) would last which could not be an agency of force on appropriate occasions?

We could go on. LeFevre gratuitously equates retaliation with imposition; he talks of the theological conception of justice as "correction in another life" while still accepting the secular concept of "justice" as providing "a heaven and a hell on earth and in this lifetime." Well, one should think so—but what then happens to the claim that justice is a "mystical" concept? If hell ought to be experienced by anyone ever, it should be here on earth—nothing would be accomplished by waiting for an after life. *(This is why justice has a function in human, living society and none, other than inducing irrational fears, within a religious framework.)*

LESSON

LeFevre closes his essay with some words of advice. He says,

> And if and when you are victimized, either by a bad product, a bad service, or a bad actor, you can learn a lesson from this and take the available precautions so that you will not suffer a second time.

Right on, one wants to say, and add, "and the lesson is, some of us having learned it by now, that we ought to make provisions for instantiating the moral/political principle that 'no man must profit from his wrong against another,' in the form of a just legal system of protection of human rights and the punishment of their violation." I am only sorry that Mr. LeFevre, who has done much work toward educating individuals in the value of freedom, has not learned that lesson. ◻

COMMITTEE TO REESTABLISH THE GOLD STANDARD

"The struggle against gold which is one of the main concerns of all contemporary governments must not be looked upon as an isolated phenomenon. It is but one item in the gigantic process of destruction which is the mark of our time. People fight the gold standard because they want to substitute national autarky for free trade, war for peace, totalitarian government omnipotence for liberty."

Ludwig von Mises

The Committee to Reestablish the Gold Standard is launching a campaign to return America to the gold standard. Our goal is to remove the government coercion which compells people to deal in paper money (i.e., the laws compelling the acceptance of legal tender and prohibiting the ownership of gold). We ask you to join with us in this endeavor. Most social matters are only of ideological interest, but the issue of a gold standard is not only a moral issue, it is an issue of immense practical concern to people like ourselves.

The importance of the gold standard is that it underlies so many other vital issues. If America returns to the gold standard, then by a natural process a number of other evils will be corrected.

A gold standard will put to an end -- once and for all -- the inflation which has plagued this country since 1933. And by ending inflation it will destroy the rationalization for price and wage controls. It will make unbalanced budgets impossible and by so doing put a strict limit on the demands of special interest groups which feast at the public till. By putting foreign trade on a more rational basis the gold standard will undercut protectionist sentiment and allow a lowering of tariffs, thus combatting the trend to autarky which has developed since August 15, 1971. And by combating the trend to autarky' it will apply a powerful force for peace in the world. It was a similar movement toward autarky which preceeded and helped to cause WW I and WW II.

In attacking any of these evils directly one finds a tremendous political pressure behind each one. The pressure for price and wage controls was generated by inflation. The pressure for unbalanced budgets, leading to inflation, is made possible by the lack of discipline imposed by a gold standard. If one tries to fight unbalanced budgets or price and wage controls, one struggles futilely against these built in pressures. But if a gold standard is established , the pressures will reverse themselves and the evils will collapse of their own weight. The mistake that most friends of liberty have made in the past is that they have fought against the effects - and failed. To triumph against these evils one must fight against the cause. And the cause is the absence of a gold standard.

But this is an issue of more than ideological importance. The realization of this truth was brought home during the inflation of 1968-69.

When Lyndon Johnson decided to have both guns and butter in 1966, it was an act of evasion. Beset by pressures from both conservatives (not to let the Communists take South Vietnam) and liberals (not to sacrifice social progress for the war), he chose not to antagonize either. By wishing that the tax revenues would support both, he 'solved' the problem. The budget deficit resulting from that act of evasion caused the inflation of 1968-69, and that inflation created a turbulent emotionalism in the stock market and a sense of euphoria in the business community during which the most irrational people (such as Cortes Randell of National Student Marketing Corp, Fred Mates of Mates Fund, and Allen Klein of Cameo Parkway Records) could build large fortunes but in which rational people could not. The irrationality and abilite to evade evidenced by the 'new breed' in 1968 was a direct consequence of Lyndon Johnson's initial act of evasion in 1966. He had created a society in which irrationality was rewarded - and the irrational prospered.

The principle which is illustrated here is that every society is dominated by the type of man who best exemplifies its fundamental premises. When a society is governed by evasion, it is the men who most easily evade who achieve the highest positions and the most wealth. It is true that an irrational society will ultimately destroy itself - in the long run. But until it does, within it the irrational prosper at the expense of the rational.

Some believe that a return to reason is inevitable and that, given the excesses of the past, this will lead to an increase in the price of gold and a depression in the economy; the alternative being a runaway inflation which would destroy the country. But man's free will precludes any inevitability. The leaders of our country will either choose a course of bringing inflation under control, or they will choose a policy of ever-increasing inflation. In the first case the rational men in the society will benefit, in the second case the irrational will gain.

This is where most of the good men of our society are in error. They believe that the rational policies are inevitable. They talk about 'the coming devaluation' as though it must come. But if the President is going to successfully pursue an inflationary policy, he will have to demonetize gold. Of course it would not be rational for other countries to allow him to do this, but is it necessary that they be rational? Just how rational have they been in the past?

If you believe that a rise in the price of gold is inevitable, you can sit back and await it. If you understand that nothing in the sphere of human action is inevitable, that in the sphere of human action the concept of inevitable is not applicable but that the concept of rational is, you can decide to fight for the rational policy. In doing so you are fighting for your own self-interest. Libertarians cannot succeed in the world of 1968 so they must fight for the kind of world in which they can succeed. In this fight we ask you to join us.

We wish to encourage the formation of small groups all around the country dedicated to the reestablishment of the gold standard. Each group will work within its community and its state to educate people and to apply political pressure. The Committee to Reestablish the Gold Standard will act as a central coordinator for these groups and will mail them literature once a month. We will provide information regarding the current political situation, the virtues of the gold standard, and suggestions for educational activities.

For those who do not wish to work for the gold standard but are interested in subscribing to our literature, we would be happy to have you. However, while we are willing to donate our labor to those who donate theirs, we require recompense from those who merely wish to read our literature. The cost for an affiliate is merely to cover mailing and expenses. The cost for a subscriber includes labor.

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special supplement on anarcho-capitalism

introduction

Within the last several years a new word has entered the lexicon of political economy. Anarcho-capitalism *is the theory that what are generally considered the proper functions of a strictly limited government—basically police protection, adjudication, and defense—*can *and* should *be provided by the free market, just like other kinds of services.*

REASON *considers the subject to be an important one, deserving of serious discussion. In this issue,* REASON *publishes three articles dealing with various issues raised by anarcho-capitalists and their leading spokesman, Professor Murray Rothbard.*

anarchy, libertarian style

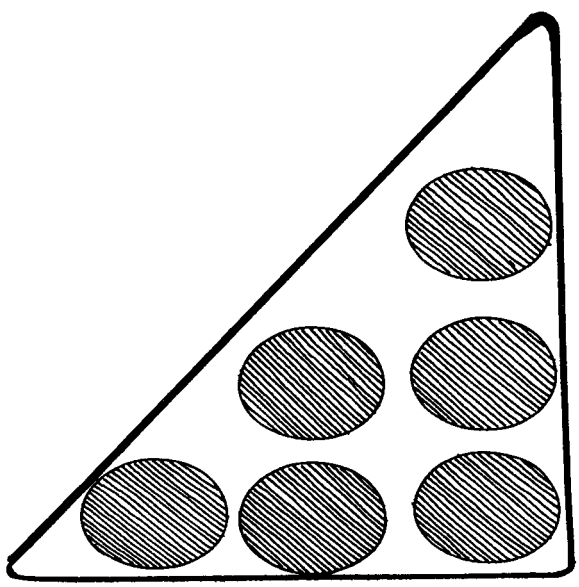
james a kuffel

The old-style liberal summed up his recognition of the necessity of a limited form of government in the familiar dictum: "Government which governs best governs least." Today's anarchist, like his predecessor, concludes that minimization of the latter will maximize the former; hence the very best government is no government at all. But, unlike his forerunner, the libertarian anarchist advocates the efficient free market and believes the profit motive and competition will streamline the service of protection. Why reject the concept of government? What is proposed to replace it? How realistic are the proposals? These broad questions may be answered briefly.

VOLUNTARY TAX?

A major tenet held by libertarian anarchists is that it is inherent in the nature of government to expropriate its means of support. For example, economist-mentor Murray Rothbard, in his *POWER AND MARKET*, is keenly aware that a government is functioning contrary to purpose when, rather than upholding the rights of its citizens, it proceeds to hold-up its citizens through taxation. But what is it supposedly inherent in the nature of government that necessitates this initiation of force? Is there no alternative to government by expropriation except anarchy? Although it is not the purpose of this essay to consider the best means of voluntary support of government—which clearly would require far less amounts to operate than the leviathan of today—voluntary support should at least be recognized as an alternative.

Anarchists conceive government as self-contradictory, basing their claim less on theory than on as assortment of government interventions and on historical examples of societies reverting to barbarism with governments wielding the oppressive force. Therefore, it is not surprising that they impart taxation—an improper function of government—to the nature of government itself. The error patent in such reasoning may be called overgeneralization, historical



determinism, or "political arithmetic" it is no less crude than that contained in the doctrine of the "iron law of wages," which in its time had an apparent plausibility viewed historically. It is senseless, however, to set up a necessarily evil (strawman) concept of government as the only alternative to anarchy,since the concept of government as a voluntary supported institution is readily at hand.

PROTECTION AGENCIES

Actually, the system proposed is not anarchy per se, because a "legalized" use of force by "competitive protection agencies" or "governments" is condoned. It is an eclecticism which seeks to incorporate political and economic functions. The goal is to avoid the disorder of anarchy by assigning governmental functions to protective agencies which, through competition, presumably will provide better insurance against tyranny being imposed throughout a large area.

It should be emphasized that the essential difference between government and "competing protective agencies" is that the former *monopolizes* the legalized use of physical force whereas the latter *competes* in "legalized" force.

That these protection agencies or "governments" will use force is a point conspicuously deemphasized by their advocates; but it is well worth keeping in mind. The following passage from *POWER AND MARKET* is illuminating in this and other respects: " . . any sort of force used against a man not yet convicted of a crime is itself an invasive and criminal act which could not be consonant with the free society we have been postulating." The fact ignored is that conviction, which is the result of judicial process, presupposes the power of prior arrest. According to the above reasoning, litigation may not proceed unless a man voluntarily accepts the role of defendant, which is absurd if he is really guilty and improbable if he is innocent, finding the charge audacious and humiliating, and the would-be trial burdensome. It is difficult to see how such a system of protection can achieve its ends.

As soon as we drop the unrealistic assumption that everyone would voluntarily submit to the judicial process, we are headed away from such fantasies as shopping for the best buy in whatever would constitute an approved court. Like reading a well-written science-fiction novel, it is perhaps fascinating to conjecture the unlimited possibilities in the variety of services which a mixture of economic and political functions could produce. But until and unless these projections are provided with theoretical support, they remain fiction not science.

COURTS AND LAW

Jurisprudence is difficult and complex, and it is farfetched to assume "competing governments" would deduce exactly the same "laws" in all areas (e.g., penalties), not to say in one. Imagine the consequences of various "governments" attempting to apply different "laws" within the same territory. Or imagine the situation in which a client of one "government" is coerced by another "government," neither one recognizing the other's authority *in toto* or as appropriate to some specific action undertaken. Equality before *the* law would be impossible, that is, justice would be impossible. Government may function improperly, taking invasive action on a large scale. But, as a corollary, it is the only form of organized force which can insure the protection of rights on a large scale. The problem is not government per se but the principles to which it subscribes and on which it functions. The lack of territorial jurisdiction, peculiar to the idea of competing agencies of force, guarantees that no one's rights are safeguarded anywhere.

AGREEMENTS?

It is said that "social agreements" would be made; therefore, "political uniformity" would obtain, as it necessarily does under a system of government operating under objective law. The notion is so tenuous in light of the above considerations that it can hardly be taken seriously. In a recent work titled *IN DEFENSE OF SOVEREIGNTY*, W. J. Stankiewicz states the appropriate structural principle:

> A practical legal order requires a point beyond which disputes cannot be carried if order is to be maintained. It is this difficulty which requires us to postulate a sovereign legislator in the state viewed dynamically.

If binding (i.e., enforced) agreement (law?) cannot be made and maintained regarding the point of ultimate decision—and it cannot by the competitive nature of the system postulated in which no one agency or collective can be considered sovereign—the ultimate decision function is necessarily absent.

STATISM—NO!

I sympathize with those who are struggling to reverse the trend toward statism. But some forget that even the most perfect mechanism of organized force will become destructive if it is not operated according to the principles and purposes for which it was designed. Would libertarian anarchists reject the concept of a constitution because, say, of the 16th amendment? No pro-life social system can long withstand a continuous seepage of irrational philosophies into its foundation.

Let anyone who believes a system of "competing governments" is possible first take the effort to work it out theoretically if he or she can, not leaving it floating—like the Marxian utopia on Hegelian dialectics—later to be grounded in action which leaves destruction and suffering in its wake. That a free society can prevail while government withers away is now and, I expect, will always be an article of faith, not reason. ◻

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on anarchism

ron heiner

The following essay is addressed to those discussions concerning the existence of the State; in particular to those arguments which deny the need for the State altogether; to those which advocate complete anarchism. It is the thesis of this essay that anarchism cannot be a viable, lasting system of social organization; indeed, that human society is not possible without the existence of a State. To put it more strongly, that what one calls society (peaceful cooperation of men under the principle of the division of labor) and what one calls the State (the social apparatus of compulsion and coercion which demands a monopoly of force over the area under its control) are so inseparably linked that it is a non sequitur even to advocate the elimination of the State as if it were just a matter of enlightened decision whether to have one or not.

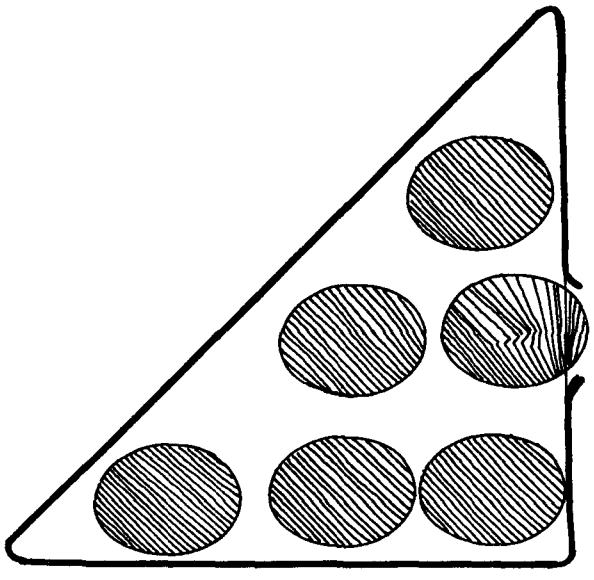
When hypothetically considering the life of a completely autarkic existence of isolated individuals, questions of State and society become meaningless; for there is no essential difference between the type of interaction among human beings in such a State and that exhibited among animals in the jungle (all become enemies in a common struggle for survival). There is no peaceful cooperation; rather, there prevails pitiless biological competition (2). In such a state, autarkic man is not free; in order successfully to remove felt-uneasiness, he must continually adjust his endeavors to the conditions of his environment (which in the autarkic state also includes the enormously intelligent and cunning animal: man). Because of man's relatively small and weak physical stature, his ability to reason becomes the foremost tool in his struggle to survive.

Now to the extent that man's reason is capable of comprehending the benefits to be derived from peaceful cooperation under the principle of the division of labor, he then comes to view his fellow creatures not as enemies along with the gorillas and sharks, but rather as friends, as collaborators, whose rightly understood (long-run) interests are in harmony rather than in conflict. Thus, we have the nexus for society and its progressive intensification.

As exemplified by autarkic survival and societal division of labor, there are two fundamentally different kinds of interaction among human beings: peaceful, voluntary, mutual interaction; and coercive involuntary, nonmutual interaction. The former is the essential feature of the market process of the market economy. The basic interaction is one of exchange between two individuals which results in a situation that benefits both individuals (as they each view the situation). The theory of this process of exchange is a significant corollary of the theory of subjective value. To restate somewhat differently, each of two individuals acts to cooperate with the other individual so as to induce the other voluntarily to act in a mutually cooperative manner such that each individual views the result of this interaction as an improvement in his own welfare.

In contrast, the latter form of interaction is fundamentally different from the market principle discussed above. In this form of interaction, we have one individual acting to bring about a situation (requiring the involvement of another individual) which the initiating individual views as an improvement but which the other views as a detriment to his own welfare and thusly would not have supplied the interaction desired by the initiating individual but for the application or threat of violence by that individual. Thus, instead of mutual, voluntary (market) interaction, we have nonmutual, coercive (nonmarket) interaction.

We have thus far said that coercive interaction is a nonmarket activity (viz: that coercive interaction is itself nonmarket) but have not analyzed whether the market can successfully direct the use of this kind of activity the content of which is nonmarket in character. (3) Nor has it been questioned whether the use of coercive activity is necessary at all in human society. Let us assume with regard to the second question that every individual in our hypothetical world is fully committed to peaceful, mutual interaction; that there are no mentally sick whose actions might antagonize others; and that there are no antisocial individuals whose actions are intentionally antagonistic to others (stealing, killing, rape, etc.). (4) Nevertheless, there still arise in the normal course of market affairs conflicts the successful resolution of which requires a system of rules and an agency with the power to enforce those rules.



The most important of these conflicts are business contract disputes arising from unforeseen, unanticipated contingencies which render the prior agreement unacceptable to either one or both parties. (5) It is recognized that many of these conflicts (due to mistakes, unforeseen events, etc.) can be and are successfully resolved by the parties themselves (or with the aid of lawyers and other consultants), but there still remain a significant number of these disputes which, for many and varied reasons according to the particular circumstances, the involved parties are unable to resolve themselves. The former are simply renegotiated voluntary agreements, while the latter remain as disputes the resolution for which proved unsuccessful through a voluntary, transactional process: thus their resolution is beyond the market principle. (6)

Furthermore, agreements which involve conditions for renegotiation and ones which set up automatic arbitration procedures do not eliminate voluntarily unresolvable disputes; for there can arise unforeseen events and unanticipated contingencies of a nature to make some or all of the terms of the agreement unacceptable to one or both parties regardless of prior stipulated side conditions, re-evolution procedures, and automatic arbitration procedures.

The basis for the disputes thus far discussed (and also the reason for the impossibility of their elimination) is due to the inherent imperfection of human knowledge and uncertainty of the future, for it must be understood that the uncertainty of the future is not anything analagous to some auxiliary datum which, if recognized as a revelent factor, can be eliminated by means of prior arrangement procedures (such as automatic arbitration agreements). Such prior arrangements can indeed aid in resolution of possible disputes, but by no means can they eliminate the inherent future indeterminancy which may result in unanticipated events which could cause contract disputes not necessarily all of which can be voluntarily resolved in spite of the helpful foresight and previous committments to voluntary settlement embodied in prior arbitration, etc. provisions. As long as this is the case, there will always arise such disputes some of which are unresolvable through voluntary renegotiation by the parties and their consultants. In order to illustrate, a few cases are chosen from those often cited in beginning legal texts: (7)

Wood v. Boynton (8) Here we have a mutual mistake by both parties involved in a business transaction; quoting Judge Taylor,

> . . . it appeared that on and before the twenty-eighth of December 1883 the plaintiff was the owner of and in possession of a small stone of the nature and value of which she was ignorant; that on that day she sold it to one of the defendants for the sum of one dollar. Afterwards it was ascertained that the stone was a rough diamond and of the value of about $700. After hearing this fact the plaintiff tendered the defendants the one dollar, and ten cents as interest, and demanded the return of the stone to her. The defendants refused to deliver it, and therefore she commenced this action.

Sherwood v. Walker (9) is a similar case; in it, however, the court ruled differently than in the previous case). The dispute arose over a contract concerning the sale of a cow. The seller agreed to sell the cow at an unusually "low" price because that particular cow was thought to be barren. Before, however, the actual transfer of the cow, it was learned that the cow was not barren (rendering the cow of much greater market value), and the seller refused to sell the cow at the agreed price; whereupon, the buyer sued the seller for breach of contract.

Leonard vs. Howard (10). This case involved a dispute between two companies; one which contracted the other for plumbing work in a building constructed by the first company. The plumbing company made a mistake in its estimate resulting in a low unprofitable bid, and, upon realization of the error, refused to install the contracted services at the agreed bid. The construction company sued the plumbing company for performance of contract.

Geremia vs. Boyarsky (11) is similar to the above case, except that the buyer was aware during the settlement of the contract that the bid was too low, that the seller must have made a mistake; but the buyer went ahead, attempting to use the contract to force the sellers to honor the unprofitable bid. (The courts decided for the buyer in *Leonard vs. Howard* , but against the buyer in *Geremia vs. Boyarsky*.)

The following three cases more clearly represent examples of unanticipated events rather than of error and mistake.

Paradine vs. Jane (12). The buyer had rented some land from the seller but over a certain period of time refused to pay rents because an invading army had expelled him from the land, preventing him from realizing any income from the land during that period. The seller brought suit to recover unpaid rents.

Taylor vs. Caldwell (13). One party entered into an agreement to rent a hall from another party in order to have four concerts therein. However, in the meantime, before the beginning of the concerts, a fire destroyed the hall resulting in the cancellation of the concerts. The renters sued for losses suffered due to cancellation of the concerts.

Krell vs. Henry (14). A contract was entered into in which one party agreed to pay a sum to rent a flat from the other party on certain days on which it had been announced that the coronation process (for King Edward VII of England in 1902) would take place along the avenue passing beneath the flat. A deposit was paid when the contract was agreed upon. When the processions did not take place on the dates announced, the renting party refused to pay the balance of the agreed rent. The owner of the flat then sued for the unpaid rent.

All of the above cases represent actual disputes the resolution for which requires the decision of a court. (15) It should also be clear that these represent only the most minute fraction of

the literally thousands and thousands of cases which could be laboriously cited. The important point is that there is no means of eliminating the unforeseen contingencies which make the performance of voluntary arrangements either unacceptable or impossible to either party or to both, and that in a significant number of these disputes, a system of law and courts, and some coercive apparatus to enforce the laws and court decisions, is necessary to resolve them.

Another related class of disputes are tort disputes which arise from the negligence of one or both parties of the dispute. They are related because the dissatisfaction to one or both parties resulting from the negligence would have been avoided (in the assumed world of nonintentionally antagonistic behavior) if the unforeseen events caused by the negligence had been anticipated—if the negligent party had foreseen the specific consequences (16) of his actions, that is, if knowledge of the future were perfect. The basic situation is one in which two parties (A and B) have not directly coercively interacted, but one of the parties (A) has experienced dissatisfactions related to an event at least partially contributed to by B for which A believes B ought to bear at least a portion of the responsibility (should at least partially contribute toward what A considers an acceptable removal of his dissatisfaction).

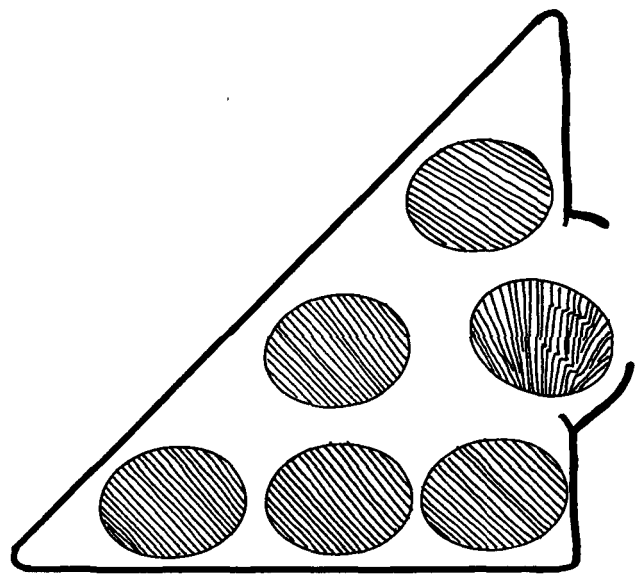
In both dispute classes, A and B are not directly, intentionally antagonistic but are nevertheless involved in a dispute (through prior contract or through negligent act) which would not have occurred if there were no uncertainty of the future.

Further similarities (and dissimilarities) could be pursued, but the above development on contract disputes is sufficient for the present discussion to analyze tort disputes. As above, either the tort originated dispute will be successfully worked out through voluntary, private negotiation between the involved parties or, this voluntary negotiation having failed, the resolution of the dispute will require a system of laws and courts, and coercive apparatus if necessary to enforce those laws and court decisions. Thus, in both contract and tort disputes, a system of laws, courts, and police is necessary to prevent coercive interaction between the parties of those disputes which could not be voluntarily resolved.

If we now drop the assumption of the absence of antisocial behavior on the part of some individuals due to sickness or due to antisocial intentions (theft, property and personal damage, etc.), then there is another additional source of conflict. In these cases, however, the postulate of antisocial behavior implies that there is no other method of resolution beside the threat or application of violence by some agency. (17) If this were not the case, then every individual would be at the mercy of his stronger fellows (whether intentional or due to some form of sickness).

In a broader context, it is because situations do arise for which, from the point of view of some individuals, coercive interaction is deemed appropriate that conflicts can and will arise again and again in human society. As long as the imperfection of knowledge and the uncertainty of the future remains as basic underlying datums of human action and so long as some individuals in some circumstances deem coercive action suitable, there will always necessarily arise the indispensable need for a system of laws, a court system, and the police apparatus to enforce the laws and the decisions of the courts.

The last and most significant question of the essay still remains. Can the market system handle these necessary coercive functions described above? (Could private protection agencies and private court systems provide a viable alternative to the State?) Much of the previous development has provided grounds for a negative answer to this question. Returning to our original world in which everyone is committed to peaceful, mutual interaction and in which there is no physical or mental sickness of a kind that could result in antagonistic behavior, we have seen that tort and contract disputes nevertheless arise and a significant portion are unresolvable through voluntary arrangement and renegotiation respectively. If we try to imagine a state of affairs in which there are only privately operated protection agencies and private courts from which disputing parties can procure services in the same manner as other services offered on the market, then unsolvable difficulties arise. Each party may attempt to secure the services of whatever court would favor his point of view and, consequently, there would be the emergence of courts seeking clients some of whom hold different, antagonistic beliefs and viewpoints (there might even emerge courts soliciting individuals with certain religious, political, and moral views along with courts emphasizing different principles in tort, liability, and contract disputes). The conflicting parties could also look for protection agencies which would enforce their views and opinions, and as it has already been shown that disputes do arise (and that there is very rarely if ever complete unanimity of ideas) then we can expect a variety of different private police agencies to emerge with each serving various parties some of whom hold antagonistic positions and ideas. In such a state of affairs, we do not have a system of rules and a court system with the power to enforce its decisions but, rather, we



have separate conflicting courts and police agencies, each attempting to serve clients whose differing views could not be resolved through voluntary negotiation. This situation is analagous to the myriad of problems concerning jurisdictional disputes between individuals and courts of different geographical regions, states, and nations. For example: A does something antagonistic to B and then travels to another area (or hires the services of another police agency and court) where B cannot obtain acceptable legal redress (as he views it) short of the armies (or protection agency) of his area invading those of A, thus initiating conflict rather than successfully resolving the dispute.

If there is not a sufficient degree of coordination and consistency amongst these private courts and police agencies to the voluntary satisfaction of the vast majority of those individuals purchasing the services of these agencies, then one of two alternatives would result: warring factions, each with its own court and protection agency, where the result of these conflicts is the complete disintegration of societal bonds; or warring factions as above, but instead of leading to the disintegration of society, leading rather to the emergence of some dictator or band of men promising order and coordination (or the emergence of a large combination of individuals into a majority supporting a general apparatus of compulsion and coercion through parliamentary or democratic procedures). The significant understanding is that the successful functioning of a market court and police system requires a great degree of doctrinal and interjurisdictional coordination and consistency between the various privately run agencies. There must be some acceptable (to the vast majority) system of general rules and procedures relating and regulating the activities of these private agencies; without such a general overseeing system of rules and procedures, a system of private protection and private courts would not results in decisions which a nonnegligible proportion of disputing parties would voluntarily accept (thus resulting in coercive interaction among the parties bringing about either one of the two possibilities mentioned above).

It is precisely because in such a completely voluntary, market world, that the disputing parties have the unrestricted choice to select different courts whose decisions may not match and which may not be acceptable to either one or both parties that these disputes may not be resolved without coercive interaction of the parties. Even if there was for some reason only one privately operated court or if both parties chose the same private court and agreed to abide by its decision, this would not prevent either one of the parties from refusing to accept the court's decision. (The application of force on the refusing party would require for its successful functioning another system of general rules concerning agreements made with these private courts and an agency supported by the majority with the power to enforce these rules. Otherwise, conflicts would break out between the refusing parties and the private courts and police agencies on a sufficiently general scale to result in the pattern of warring factions described above.)

If one examines the private police agencies more closely, it is also the case that unless the activities of these police agencies are very carefully limited and coordinated into a general system of acceptable uses, applications, and purposes ascribed to by the majority of interacting individuals these agencies would not bring about "protection" and "resolution" but rather would also result in a general pattern of warring factions.

Therefore, we have a general system of laws and procedures which not only determine the legitimate use and application of coercive activity of the protection agencies but also arbitrate the decisions of the private courts into a system of continuity and consistency of legal principle; and we have a general agency of force with the power to enforce these laws and procedures if necessary. (We have a State, its laws, and the agency of government to enforce the laws.) To restate, the successful operation of a private police and court system requires an overseeing system of rules and procedures which function independently from the private agencies and whose successful operation requires the consent and support of the majority of interacting individuals (18) (viz. acts in accordance with the ideas of justice and equity of the large majority of individuals, not the funds of privately soliciting clients involved in disagreements.

What those people pass over who envision only a market system of law and protection is that the functioning of a market is based solely on voluntary mutual cooperation. But we are dealing in precisely those areas where there are actual disputes in which voluntary renegotiation has failed; in which one or both parties may consider some form of violence and coercion as necessary and justified; and most significantly in which there is no system of rules which the disputants must adjust their actions to or an arbitrating apparatus whose decisions they must follow. Indeed, in our completely market world there is no element which says the disputants must adjust to any limitation of conduct or consult any court regardless of the possibly antagonistic consequences of their actions. As long as there are some individuals who will not willingly adjust their actions to a range acceptable to the majority of those around them or will refuse to abide by the decisions of the private courts, then there will be continual disruption of social relations either resulting in the disintegration of the social system or in the majority of individuals grouping behind some general apparatus of compulsion and coercion which would determine the legitimate use of any conduct that is considered to be coercive (thus determining a system of rules and procedures which everyone, including the private agencies, must follow).

Now if one argues that the protection agencies would force the disputants to abide by the agreements with and the decisions of the private courts, then one is no longer describing a system of voluntary interaction but rather a system of coercive interaction comprised by agencies with the power to defy the wishes of its clients (or coerce individuals who are not clients who have for some reason antagonized other individuals who hired these agencies). The basic issue remains, we have not a system of smooth resolution of disputes but, to the contrary, have a system of private

agencies coercively acting against the intentions of other individuals (there is no longer simply mutual interaction of the market) which, unless these agencies limit their coercive activities to usages acceptable to the vast majority, will result in conflict between those individuals and the agencies on a sufficiently general scale to result in the pattern of warring factions described previously.

Furthermore, all of the modern instances of privately operated coercive functions do not contradict the argument of this thesis. For example, it is possible for an individual to hire private detectives, private guards, and so forth; but the activities of these agencies must be in accordance with the body of laws and procedures determined by the courts, legal system, and enforced by the government. Thus, such activities as ransacking of rooms, "strong arm" tactics, and torture by private guards and private detectives are prohibited.

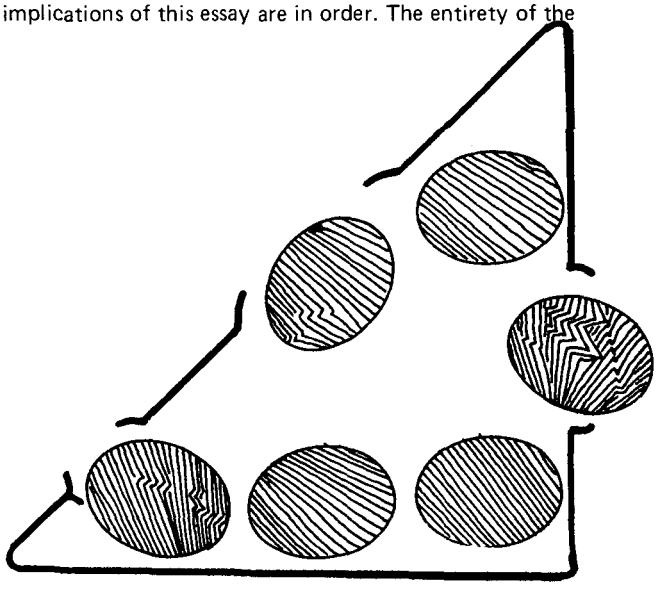
If we now introduce into our world the possibility of socially antagonistic conduct on the part of some individuals either intentionally or due to sickness, another significant area of social conflict arises. The important additional aspect with regard to this kind of behavior is, in light of the preceding discussion, however, only an extension of the logic already developed. This different aspect involves two differences from tort-contract disputes the second of which is most significant. First, the cause of directly antagonistic interactional disputes is not ultimately the imperfection of knowledge (uncertainty of the future) but is rather the motivation or intention of the antagonizer (19): the desire to interact with someone in a nonvoluntary, coercive manner. Indeed, this was precisely that which was abstracted from initially and from which such abstraction left the continual uncertainty of the future as the only remaining cause of disputes. The second important difference follows from the distinction of directly antagonistic interaction itself; that those antagonized will act to stop and deter the causer of the antagonism, which from the viewpoint of the antagonizer is itself coercive interaction. (viz: those who have been caused (possibly extreme) dissatisfaction by the antagonizer will attempt to confine, to obtain property from, to punish, and/or to prelimit the actions of the antagonizer all of which themselves cause dissatisfaction to the antagonizer.) This implies that the antagonizer will not voluntarily interact with the "counter" actions of those antagonized and in fact will likely endeavor to actively thwart those counteractions through further coercive interaction. (The interaction between the antagonizer and those antagonized may involve various hired agents and agencies, possibly similar to those mentioned above, which from the viewpoint of both parties represent extensions of the other's antagonistic interaction.)

Rephrasing to coordinate with previous development, those disputes originated through directly antagonistic interaction automatically, and particularly, in those instances of more extreme dissatisfaction, are those for which successful resolution through voluntary evaluation and negotiation is unlikely. Thus, whereas before with regard to contract–tort disputes only a fraction of those disputes may prove unresolvable through voluntary negotiation, contrarily, those disputes initiated through coercive interaction essentially and inherently involve the nonvoluntarily resolvable problem.

As was discussed in the previous sections, therefore, all of the problems leading to and ensuing from a general pattern of intersocietal warring factions is essentially and inherently involved in all those disputes fully or partially initiated through directly antagonistic interaction in the social system.

It seems evident, then, that the smooth functioning of the market process itself requires the existence of a coercive apparatus which prescribes the legitimate use of coercive interaction in the social system and that the market by its very, voluntary nature is incapable of providing the coercive apparatus itself (although it can provide agencies whose coercive elements operate within the system of rules and procedures prescribed by the State). If one stops to reflect that when disputes arise in market affairs then they are either resolved privately or, if this avenue proves unsuccessful, the disputants resort to the laws and courts; but if the laws, courts, and police are themselves also voluntary elements of the market, then by hypothesis these voluntary services (which of course may in many instances significantly aid in the resolution of thse disputes) cannot resolve a dispute which has already proven unresolvable through voluntary renegotiation. In fact, these market police and court services are not essentially different from any other private consultant (lawyers, engineers, etc.) whose services the disputants might hire to aid themselves in voluntarily resolving the dispute. But again, if voluntary re-evaluation proves unacceptable (even with the aid of these private agencies) to either one or both parties, then the resolution of the dispute is beyond the services of the market; and at this stage, unless continual conflict is to arise, the majority must be prepared through some general nonmarket, coercive apparatus to prescribe the legitimate sphere of coercive interaction and to restrain those who are unwilling to so limit their actions.

In closing, a few comments concerning possible misconstrued implications of this essay are in order. The entirety of the



above discussion in no way implies anything concerning the suitable scope of government policy, activity, and interference in the market system. It does not imply the State is "good," "bad," or "needed," only that the smooth functioning of the market process is not possible without the existence of the State. Furthermore, the essay does not comment on the morality of coercive activity; only that because the human mind is capable of comprehending this kind of behavior and thus employing it, that some method of successfully integrating such conduct with peaceful interaction is indispensable for the emergence and progressive intensification of societal relations. And lastly, that there is no conflict between the cognition that society requires the existence of a State (21) and all of the problems that are discussed in economics with regard to the unsuitability of government interference in the market.

NOTES & REFERENCES

(1) The author would like explicitly to acknowledge the writings of Ludwig von Mises which, in large measure, have provided the basis for the discussion of the essay. However Professor Mises bears no responsibility for any deficiences of the present article.

(2) The autarkic state is, to re-emphasize, hypothetical. Even the most primitive known societies exhibit a great degree of cooperation and division of labor when contrasted with this hypothetical existence.

(3) For example, totally private police agencies: the usage of the police action directed by the market; but the police coercion itself being nonmarket interaction.

(4) It should be noted that the emphasis of this paper analyses what the author considers the more difficult case in which criminal (intentionally antagonistic) behavior is assumed absent. Consequently, disputes related to tort and criminal instances are developed primarily by extensions of the logic developed in the discussions concerning contract disputes.

(5) The usage of traditional legal terminology to facilitate readability does not weaken the reasoning of the essay (viz: does not beg the question by employing terms the meaning of which implicitly assumes the existence of the state).

(6) It should also be noted that virtually all such contract disputes, and tort and liability cases, are vigorously attempted to be resolved "out of court" (viz: short of a formal, binding court decision) but, nevertheless, a significant number still come before the decision of the courts.

(7) The following cases can be found in *THE NATURE AND FUNCTIONS OF LAW*, Berman, Harold J., Greiner, William A.(Foundation Press: N.Y., 1966), Chapters 8,9. The author would recommend the reading of these chapters for those interested in the subject of this essay. In addition, chapter 18 from Hans J. Morgenthau's *POLITICS AMONG NATIONS* (Alfred A. Knopf, N.Y. 4th ed. 1967), is also recommended.

(8) Supreme Court of Wisconsin, 64 Wis. 265, 25 N.W. 42 (1885).

(9) Supreme Court of Michigan, 66 Mich. 568, 33 N.W. 919 (1887).

(10) Supreme Court of Oregon, 67 Ore. 203, 35 P. 549 (1913).

(11) Supreme Court of Errors of Connecticut, 1928. 107 Conn. 387, 104 A 749.

(12) King's Bench, 1647. Aleyn, 26, 82 English Reprint 897.

(13) Queen's Bench, 1863. 3 Best & Smith 826.

(14) King's Bench, (1903) 2 K.B. 740.

(15) The fact that in some of these cases the uncertainty involved was due to governmental interference does not affect the validity of the examples. Others could have been chosen which would not have involved this aspect, but it was hoped that the chosen cases would be easier to locate in basic law texts and anthologies rather than laboriously searching through many case records.

(16) The fact that a certain act might very possibly result in, for example, harm to someone else does not alter the understanding that if these harmful consequences were specifically known in advance for a given (potentially negligent) act, then the individual would have have so acted. (Completion of the act with this prior knowledge would either be criminal or mentally sick conduct, which, at this point in the discussion, is assumed nonexistent.)

(17) The mentally or physically sick individual whose actions are injurious to others must be restrained from his antagonistic actions even though most or all of the individuals who condone this restraint may not morally blame that individual; and this restraint is no less coercive interaction than the apprehension of criminals.

(18) Those readers who may have possible questions concerning governmental might and power used to dominate rather than to reflect the ideas of the majority of citizens are referred to *HUMAN ACTION* by Ludwig von Mises, pp. 187-91.

(19) Modifications of the discussion of the present section related to unintentionally antagonistic conduct due to mental sickness is deleted because the second difference discussed below is still involved. In fact, even though any antagonism to others may be unintentional or uncontrollable the desire to so act is nevertheless still there, though distorted in various "irrational" ways due to mental disorder.

(20) This is not meant to imply that the State must precede the origin of society but, rather, that the emergence of the State and the progressive intensification of societal relations occur simultaneously as part of the same pattern of collaboration which brings forth human civilization. ◻

anarchaos: a critical look at rothbard's "defense agencies"

charles barr

Of all the libertarians who advocate free-market anarchism, or "anarcho-capitalism," the one with the most impressive credentials is Professor Murray N. Rothbard. He has written a monumental economic treatise, *Man, Economy and State* (1); he has studied under Ludwig von Mises; he teaches economics at Brooklyn Polytechnic Institute; and he has recently contributed articles to the *New York Times*. In 1970, Rothbard stated his case against the existence of government in the first chapter of a new book, *Power and Market* (2).

Rothbard's views on government merit an in-depth critical examination for several reasons: 1) Anarchism is becoming a popular and fashionable libertarian position. 2) Rothbard is the leading theoretician of that viewpoint. 3) Even though Chapter 1 of *Power and Market* is very short (a little over six pages), it presents the chief arguments used in everyday debate between free-market anarchists and advocates of limited government.

The first chapter of *Power and Market*, which this article will be concerned with, (3) is entitled "Defense Services on the Free Market." After a few introductory paragraphs, Rothbard says:

> A supply of defense services on the free market would mean maintaining the axiom of the free society, namely, that there be no use of physical force except in *defense* against those using force to invade person or property. This would imply the complete absence of a State apparatus or government, for the State, unlike all other persons and institutions in society, acquires its revenue, not by exchanges freely contracted, but by a system of unilateral coercion called "taxation." Defense in the free society (including such defense services to person and property as police protection and judicial findings) would therefore have to be supplied by people or firms who (a) gained their revenue voluntarily rather than by coercion and (b) did not — as the State does — arrogate to themselves a compulsory monopoly of police or judicial protection. Only such libertarian provision of defense service would be consonant with a free market and a free society. Thus, defense firms would have to be as freely competitive and as non-coercive against noninvaders as are all other suppliers of goods and services on the free market. Defense services, like all other services, would be marketable and marketable only.

There are several things wrong with Rothbard's statements above. The most serious deficiency is his failure to define precisely what he means by "defense." Does he mean merely *protection* of an individual's property, or does he also subsume under the concept the property's recovery or replacement? Does it include incarceration of a criminal after a crime has been committed, or does it simply refer to the force used to prevent a criminal from carrying out his mission? These questions are crucial if one is to understand and attempt to apply anarchist (or any other) principles to society at large. Rothbard does not answer them.

When Rothbard states that defense firms must be "non-coercive against noninvaders," he is making the implicit assumption that it is known who is an invader and who isn't. This is not always the case, of course; and the system that Rothbard proposes, with its absence of the power of subpoena, can make it extremely difficult to discover and prosecute criminals after the fact.

To forestall confusion on another key issue, let us examine the sense in which the State has "a compulsory monopoly on police or judicial protection." In the United States, for example, private agencies exist which perform every type of police or judicial function imaginable. The government is a "compulsory monopoly" in only two senses: (a) citizens are forced to support it, via taxation, whether they want to or not, and (b) people are legally required to use the government as the sole agency for *retaliatory* (not immediate defensive) force. Under the Objectivist and some other libertarian concepts of limited government, only the second condition would apply.

Rothbard's next paragraph is notable mainly for a glaring error of omission:

> Those economists and others who espouse the philosophy of *laissez faire* believe that the freedom of the market should be upheld and that property right must not be invaded. Nevertheless, they strongly believe that defense service *cannot* be supplied by the market and that defense against invasion of property must therefore be supplied outside the free market, by the coercive force of the government. In arguing this, they are caught in an insoluble contradiction, for they sanction and advocate massive invasion of property by the very agency

(government) that is supposed to defend people against invasion! For a *laissez faire* government would necessarily have to seize its revenues by the invasion of property called taxation and would arrogate it itself a compulsory monopoly of defense services over some arbitrarily designated territorial area. The *laissez faire* theorists (who are here joined by almost all other writers) attempt to redeem their position from this glaring contradiction by asserting that a purely free market defense service *could not* exist and that therefore those who value highly a forcible defense against violence would have to fall back on the State (despite its black historical record as *the* great engine of invasive violence) as a necessary evil for the protection of person and property.

In making the above statements, Rothbard ignores the most prominent and influential libertarian advocate of limited government: Ayn Rand. (To my knowledge, he does not mention Rand in *Power and Market* at all!) Ayn Rand has stated that she is opposed to compulsory taxation and that she does not believe there is any such thing as a "necessary evil." This is the position taken by the majority of Objectivists and other libertarians who advocate limited government. Rothbard has attempted to discredit limited-government libertarians by attributing to them views of traditional *laissez fairists* which most advocates of limited government today do not hold.

Rothbard's statement that *laissez faire* theorists "strongly believe that defense service *cannot* be supplied by the market" is misleading. There are any number of defense services, from door locks to armed guards, that are supplied through the free market every day.

Rothbard continues:

> The *laissez fairists* offer several objections to the idea of free-market defense. One objection holds that, since a free market of exchanges presupposes a system of property rights, therefore the State is needed to define and allocate the structure of such rights. But we have seen that the principles of a free society *do* imply a very definite theory of property rights, namely, self-ownership and the ownership of natural resources found and transformed by one's labor. Therefore, no State or similar agency contrary to the market is needed to define or allocate property rights. This can and will be done by the use of reason and through market processes themselves; any other allocation or definition would be completely arbitrary and contrary to the principles of the free society.

Considering the fact that there is wide disagreement (even among libertarians) about the nature and implementation of property rights, it would be sheer folly to attempt to create a society in which there is no institution to settle disputes over property. Yet this is exactly what Rothbard proposes.

Let's take a look at Rothbard's proposed solutions to disputes within a society. Rothbard poses a "legal problem" as follows:

> Suppose that Jones subscribes to Defense Agency X and Smith subscribes to Defense Agency Y. . . . Smith alleges that he has been assaulted, or robbed, by Jones; Jones denies the charge. How, then, is justice to be dispensed? Clearly, Smith will file charges against Jones and institute suit or trial proceedings in the Y court system, although there can be no subpoena power, since any sort of force used against a man not yet convicted of a crime is itself an invasive and criminal act which could not be consonant with the free society we have been postulating. If Jones is declared innocent, or if he is declared guilty and consents to the finding, then there is no problem on this level, and the Y courts then institute suitable measures of punishment. But what if Jones challenges the finding? In that case he can either take the case to his X court system, or take it directly to a privately competitive Appeals Court. . . .

Rothbard has not, in fact, solved the problem at all. Suppose Jones refuses to recognize or cooperate with Smith's Y court in any manner? Does this give the Y court the right to take action it deems appropriate against Jones? Must every individual in an anarchist society defend himself against every "private court" that initiates proceedings against him?

Let's return for a moment to Smith and Jones, who have taken their dispute to a private Appeals Court. What next?

> The Appeals Court decision can then be taken by the society as binding. Indeed, in the basic legal code of the free society, there probably would be enshrined some such clause as that the decision of any two courts will be considered binding, i.e., will be the point at which the court will be able to take action against the party adjudged guilty.

Here, finally, is the key to Rothbard's system: a "basic legal code," and a monopoly code at that, which binds every member of the anarchist "society!" To discover just what kind of Pandora's Box Rothbard has now opened, let's turn the tables and ask the same kind of questions that anarchists are so fond of asking advocates of limited government:

Is this code binding on every member of the anarchist society, or is anyone free to "secede" from its application? Will the code apply to the entire world, or just to certain geographical areas? If the latter is the case, how will the boundaries of the various societies be determined? By what means will the code be established in the first place?

Actually, we are dealing here with a pseudo-concept. Rothbard explicitly rejects the idea of government; consequently, his "basic legal code" becomes a mere scrap of paper. Any attempt to enforce such a code, while retaining a society without government, will result in insoluble conflicts.

For instance, project a society with several defense agencies, each pledged to abide by the society's "basic legal code." In

the midst of this society, a new defense agency is formed, which rejects this "basic legal code" and sets up its own "competing code." The other defense agencies are now faced with two choices: to allow this agency to remain in existence, or to forcibly remove it from the market.

If the new agency is allowed to remain in existence, arbitration will become unwieldy and eventually impossible. The new agency will be operating from a different set of principles, and it will be impossible to settle a dispute to the satisfaction of all parties involved through the use of "competing principles."

If the new agency is forced out of business by the others, then the established agencies will have acted as "coercively" as the governments they replaced.

Of course, there is no reason to assume that such a situation would even have a chance to develop. More likely, upon the establishment of a free market anarchist society, each of the new competing defense agencies would very quickly adopt its own "legal code " to satisfy its particular set of customers. These codes would "compete" with each other, as each company would claim that its own code contained the best means of achieving justice. Legal chaos would result.

Divorced from the concept of government, legality cannot have any meaning; without a lawmaking body, there can be no law (in the legal sense, as distinct from natural law). What would remain would be rules, regulations and procedures set forth by each of the defense agencies in an anarchist society.

Anybody can make up a set of proposed rules for social behavior and even implement these rules to the extent that others are willing to abide by them. But these proposed rules do not become laws by virtue of the fact that someone chose to promulgate them. Similarly, any number of free-market defense agencies can create and enforce any rules they choose to; but this action does not give such rules any legal status whatever.

In fact, the concept of legality can have no place in a free market anarchist society. Even if a situation exists in which 99 per cent of the people and defense agencies subscribe to that society's "basic legal code," there is no logical means (given their premises) by which anarchists can claim that their code has any more legal standing than the code or codes which the other one per cent of the population subscribe to. To be sure, they may claim that their code is *morally* superior; and they may even be right. But upon what basis can they claim that their code is *the* legal code? Tradition? The will of the majority? No way! Remove the concept of government, and the concept of legality cannot stand.

Rothbard's attempt to "enshrine" a monopoly legal code while rejecting monopoly government conjures up other troublesome implications. For instance, judicial procedures would be determined, not by objective and uniform standards, but by some mysteriously determined "social agreement." To quote Rothbard on judicial appeals:

> *Every* legal system needs some sort of socially agreed upon cutoff point, a point at which judicial procedure stops and punishment against the convicted criminal begins.

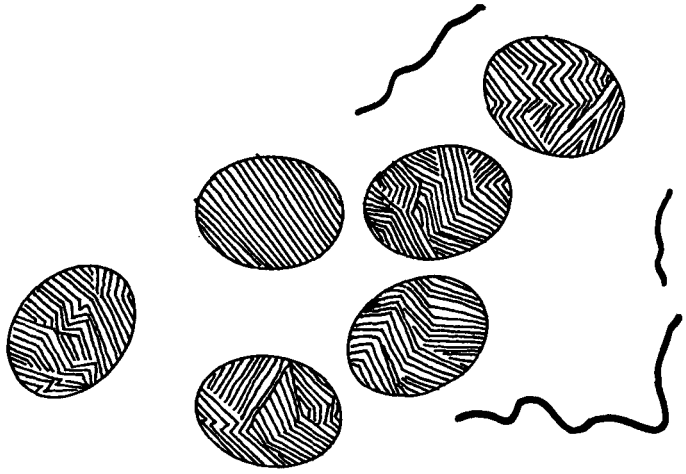
In other words, every individual living in a given anarchist society, under a given "legal system," is bound by that "socially agreed upon cutoff point," whether he as an individual agrees with it or not.

Even if all the defense agencies agree to support a single "basic legal code," there may be as many interpretations of that code as there are agencies. The decisions of one agency would not necessarily set a "precedent" for the other agencies to observe. The uniformity of legal interpretation potentially available under a hierarchical system of government courts collapses in free market anarchism. An individual is subject to prosecution whenever any defense agency interprets his actions as violating the rights of one of its clients.

In a society with a libertarian limited government, a person would have the means of discovering how that government interprets its laws, through court decisions. In a free market anarchist society with a constitution (if such a mongrel were possible) the "basic legal code" might be objective, but *interpretations* of the code would vary among the defense agencies, making it impossible for anyone to discover or project how a law might apply in a given case. The lack of uniform standards and interpretations would create a situation in which truly irreconcilable differences would have to be settled by naked force.

The central contradition in Rothbard's anarchism is the attempt to set up a legal system in the absence of government. Should anyone doubt the importance Rothbard attaches to legality, he says elsewhere in *Power and Market* (4):

> Failure to establish such a code of law would tend to break down the free market, for then defense against invasion could not be adequately achieved.



If a code of law is necessary to maintain a free market, then so is its means of enforcement; in other words, government.

NOTES AND REFERENCES

[1] Published in hardcover and paperback by Nash Publishing Co., 9255 Sunset Blvd., Los Angeles, California 90069.

[2] Published in hardcover and paperback by Institute for Humane Studies Inc., Menlo Park, California.

[3] All quotations in this article are taken from Chapter 1 of *Power and Market* and are not otherwise cited herein by page number.

[4] Pg. 123 (paperbound edition). □

Charles Barr has a B.A. in History from the University of Georgia. He heads the Libertarian Alternative, an activist libertarian organization in Los Angeles, and also works as a computer programmer.

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trends

THE LAST DAYS OF THE PUBLIC SCHOOLS

All across the country this winter public schools closed their doors as the taxpaying public, fed up at last with spiraling property taxes, increasingly said, "No." Many schools in Ohio, Missouri, Wisconsin, California, and Washington shut their doors early in December to await the new year and a new budget. In Chicago, the school board kept schools open only by borrowing ahead from 1972 funds. Schools were closed in November in Independence, Missouri, but despite the school board's brinkmanship voters rejected a tax increase proposal for the seventh time in 21 months. Despite a massive ad campaign, voters in Los Angeles rejected a $200 million "earthquake safety" school construction bond issue. And in Portland, Oregon, voters three times rejected a $6 million tax increase, as a result of which the school year will be cut by 17 to 20 days.

While the public is thus showing its disgust at the ever-more-costly public school monopoly, several radical steps in the direction of competition are quietly proceeding. The first and largest experiment in **performance contracting** has entered its second year in Gary, Indiana. There, Behavioral Research Laboratories (BRL), a profit-making Palo Alto, California, company, has been given a four-year, $2.6 million contract to take over Bannecker Elementary School. The company must refund the per-pupil cost for any child in the sixth grade who fails to reach or exceed national norms in reading and math. In just the first year, the percentage of children in the all-black school reaching or exceeding the norms has gone from 25 to 73% (as measured by an outside testing firm). BRL hired 25 of the 34 previous teachers at the school but has supplemented them with 28 "learning supervisors" (who are mainly interested local parents without teaching certification from the State). The firm uses a variety of teaching approaches, plus highly individualized instructional materials.

In California, where an OEO-sponsored five-year experiment with **education vouchers** got under way last fall, Governor Reagan's January state-of-the-state message called for a similar state-level voucher experiment. Under a voucher plan, the school system would distribute its per capita education funds directly to the parents, to cash in at any school they chose—public or private. Meanwhile, in Washington, Representative Roman Pucinski has proposed a third approach—**tax credits.** Under Representative Pucinski's bill, parents would be given a tax credit (not a deduction for income, but a direct reduction in taxes due) of 50% of their tuition payments to private schools, up to an annual maximum of $500 per child. "The time has come for the federal government to ease the crushing burden placed upon the shoulders of parents of private school pupils (by the state)," said Pucinski.

Although all three measures fall far short of establishing a free market in education, they are hopeful signs of evolution in that direction.

SOURCES:

"Plight of Public Schools Worsens," Associated Press, 10 December 1971.

"Private Firm Better at Teaching 3Rs," N.Y. Times News Service, 18 November, 1971.

"Highlights of Reagan's Message," United Press International, 6 January 1972.

"Help for the Private Schools," David Lawrence column, 22 January, 1972.

PRESCRIPTION: FREE COMPETITION

It has become almost a cliché to say that American businessmen are all for free competition—as long as it's in somebody else's field. So it is that pharmacists' lobbies in nearly every state in the union long ago got laws passed "to protect the public" by prohibiting consumer-oriented advertising of prescription drugs. Gradually, over the past few years it has begun to dawn on consumerist groups that such laws help only the sellers, at the expense of the consumer. *CONSUMER REPORTS* pointed this out a few years ago (May 1970, p. 279), and the latest group to do so is the Consumer Education and Protection Association of Philadelphia.

Last year the Pennsylvania Supreme Court threw out the state's anti-advertising law on prescription drugs. As a result, consumers have had a field day comparison shopping, and large, efficient drugstores have capitalized on discount prescription sales. Actual prescription prices in Philadelphia vary up to 100% between large and small retailers. As a result of this burgeoning free market, the State Pharmacy Board (dominated by—you guessed it—the pharmacists) has decided that the public again needs to be protected. So it has proposed regulations governing drug price advertising; briefly, the new rules would require that ads list, in addition to a drug's price, the full medical information provided to doctors. (This would raise the cost of advertising high enough effectively to prohibit it.) The Board contends that current ads "bait the public and demean the profession of pharmacy" because all emphasis is placed on price rather than service. "Drugs shouldn't be treated as pieces of merchandise," states Dr. Sol Turnoff, chairman of the Pharmacy Board.

But the consumer groups aren't about to be duped by that sort of self-serving rhetoric. Max Weiner, head of the Consumers Education and Protection Association, is leading the fight against the new rules because of the fact that the existing ads increase price competition and allow consumers to shop around. Countering the "we must protect the corner drugstore" argument, Mr. Weiner contends that "we don't think it's the consumer's problem to subsidize an old economic method of distributing drugs." Also fighting the proposed law is Frederick Wegner of the Retired Teacher's Association, which runs a mail-order pharmacy in conjunction with the American Association of Retired Persons. Wegner sees the new law as an economic attack on the mail-order business, which provides discounts of 25% to retired persons.

Whether the consumerists in Pennsylvania win or lose this round, the fact that they have seen through the political rhetoric and have explicitly come out in favor of free competition may mark a turning point in the consumer movement.

SOURCE:

"Prescription Costs Vary by Up to 100 Pct.," *PHILADEPHIA INQUIRER*, 9 January 1972.

ABORTIONS SAVE LIVES

The effects of liberalized or repealed abortion laws continue to show up in statistics. An analysis of New York City health officials showed that the maternal death rate declined from 51 per 100,000 live births in the first four months of 1970 to 16 per 100,000 in 1971. The main reason for the decline is that unsanitary illegal abortion had been the largest cause of maternal deaths until the antiabortion law was repealed. A second factor is that since more women are now choosing abortion instead of carrying the pregnancy to term, the mortality rate is going down since the risk of death in a properly-performed abortion is far less than in a full-term delivery. Figures from California, where a liberalized law has been in effect for four years, confirm the dramatic drop in mortality rates.

SOURCES:

FAMILY PLANNING PERSPECTIVES, Summer 1971, quoted in the *LOS ANGELES TIMES*, 15 August 1971.

"Liberalized Abortion Law: 4 Years Later," *LOS ANGELES TIMES*, 21 November 1971.

letters

GHETTO ECONOMICS CLARIFIED

Yale Brozen, in "Ghetto Economics," (*REASON*, November 1971) indicated that "direct evidence available . . . does not show ghetto prices to be high despite the high cost of operation . . . ." He then showed that services in which government has a role tend to be substandard in the ghetto. His analysis was useful in many respects, but I must take issue with his comments on market prices. David Caplovitz has shown, in "The Merchant and the Low-Income Consumer" (*THE GHETTO MARKETPLACE*, 1969), that—in Harlem for example—furniture and appliance stores abound (60 in East Harlem alone). The reason is the extremely high markup given to low quality goods: markups ranging from 100 to 300% and higher. Such markups allow many otherwise marginal stores to remain profitable. In other words, Harlem prices are distinctly higher than prices for comparable quality goods in non-ghetto areas.

Again, in a Federal Trade Commission Report (*ECONOMIC REPORT ON INSTALLMENT CREDIT AND RETAIL SALES PRACTICES OF DISTRICT OF COLUMBIA RETAILERS*, 1968), it was whown that "on the average, goods purchased for $100 at wholesale sold for $225 in the low-income market stores, compared with $159 in general market (non-ghetto) stores." These two reports clearly show a pricing difference between ghetto and non-ghetto areas.

In fact, the prices are high because of a number of elements unique to the ghetto, including high use of extremely liberal credit terms, point-to-point sales methods, life style, and—perhaps—the way a person on welfare values money. But to deny any abnormalities in the ghetto market or to blame any abnormalities which do exist on government actions is to give an incomplete analysis. Such analyses may cause non-libertarians to conclude that libertarians are out of touch with reality and cannot be completely believed.

Dr. Brozen's error may be due merely to lack of knowledge. However, I feel my conclusions are still valid as general criticisms of the simplistic manner by which many libertarians analyze the ills of our society.

Paul L. Siegler
Boston, Mass.

publisher's notes

•The National Committee to Legalize Gold has reported that Senator Mark Hatfield has introduced a Senate bill to restore to Americans the right to own gold. The bill number is S2709. In the House, a third legalize-gold bill (HR 5978) has been introduced by Representative James McClure, joining previous bills by Reps. Crane and Schmitz. Rep. Crane is reportedly planning to attempt to attach his bill (HR 1258) to another bill as a rider.

•The national Libertarian Party has issued its second newsletter. Among other things, it reports the results of a membership survey to determine presidential candidate preferences. The leading five contenders, in order, were economist Murray Rothbard, financial consultant Alan Greenspan, tax-protester Vivian Kellems, ex-Pentagon cost-cutter Ernest Fitzgerald, and economist/former White House adviser Martin Anderson. Other well-known figures in the poll were Representative Phillip Crane, author Robert Heinlein, and economist Milton Friedman, all of whom finished in the top ten. The Libertarian Party has adopted a very well-thought-out temporary platform and plans to held a national convention in Denver, June 4-7.

• Alan Reynolds, whose "Economics, Ethics, and Epistemology" appeared in last month's *REASON* has been appointed Economics Editor of *NATIONAL REVIEW*. His first article in that capacity "Unions: Scapegoats for Inflation " appeared in the 31 December 1971 issue of *NR*.

• A reader has supplied the following list of recent journal articles which might be of interest to *REASON* readers:

Edwin G. Dolan, "Alienation, Freedom and Economic Organization," *JOURNAL OF POLITICAL ECONOMY*, September/October 1971, pp. 1084-94.

E.K. Hunt, "A Neglected Aspect of the Economic Ideology of the Early New Deal," *REVIEW OF SOCIAL ECONOMY*, September 1971, pp. 180-92 (shows similarities between the New Deal and Prussian policies; mentions Rothbard and Kolko).

James D. Bassler, "Individualism, Competitive Economics, and the Common Law," in *Ibid.*, pp. 193-99.

George Foster, "W. E. Hearn: A Laissez-Faire Economist in Parliament," *AUSTRALIAN ECONOMIC PAPERS*, June 1971, pp. 25-39.

•*REASON* author and McGraw-Hill World News correspondent Dennis J. Chase recently had an article published in the weekly "Speak Out!" column of the *CHICAGO TRIBUNE*. The article "Air Pollution Crisis? Look at the Figures" referred to recent studies indicating that air pollution in Chicago has peaked and is now on the decline.

SOME CHALLENGES

The Hospers' whitewash of Russia, in the January 1972 *REASON*, particularly his ignorant, false remarks concerning the German-Russo War and the alleged popularity of Khrushchev, Stalin's top killer, is "the straw that broke the camel's back," so to speak.

First of all, communism is the worst, most extreme, most collectivist, and most despotic form of statism. The atrocities and mass murders by the Communists include *at least* 30 million people killed during the *Stalin era alone*—see "The Great Terror" by Bob Conquest.

At least 35-65 million have been killed by the Chinese Communists, according to Dr. Richard L. Waller, director of the Institute for Sino Studies at the University of South Carolina, and author of at least three books on this subject. China was recently praised as a "libertarian" area by Mr. Holbrook in a leading libertarian magazine—I saw no critical remarks in *REASON* on this atrocious apologia for Mao, Chou, and Co. Why not??? Do the "detached scholars" of *REASON* not view 30 million Russians and 35-65 million Chinese as human beings with the same rights and the same feelings under torture as Americans or German Jews? Cuba has the highest percentage of "political prisoners" in the world—a recent article in the leftist "libertarian" *MATCH* (Tucson, Arizona) is rather illuminating in this respect—and yet, except for this one article, I *never* see any criticism of Cuba in any "libertarian" publication and have in fact seen articles of praise, in *THE ABOLITIONIST*, for instance. Only the "kneejerk " right wing publications have published any degree of critical articles—nothing in the "liberal" or "libertarian" press. Why not?

Second, the communist foreign policy, ideology and *conspiracy* (that taboo word to all good *knee-jerk Randians*!!) has been much more aggressive against the United States than Rhodesia, Portugal, Spain, Greece, Brazil, or South Korea. There is ample evidence of a communist and specifically Soviet Russian plot to take over, literally, the whole world. Reference to Lenin's writings and Stalin's opus *PROBLEMS OF LENINISM* will suffice here—no need even to refer to the many scholarly works of those terrible "anti-communists." Obviously there are many valid reasons why communists are and *should* be singled out for "special hatred."

Third, it is the trade (long term, low or no interest), credits, aid, recognition, etc. by our government that has enabled these regimes to survive. See Anthony Sutton's two volume opus *WESTERN TECHNOLOGY AND SOVIET ECONOMIC DEVELOPMENT*, 1917-30, Volume 1, and 1930-45 Volume 2 (Volume 3 is in process of completion) in this regard. Also Keller's *EAST MINUS WEST=ZERO*.

Fourth, communist regimes are *more* statist and dictatorial than any given "fascist" or Latin "caudillo" type regime.

Fifth, there were a couple of factual errors in Dr. Hosper's discussion of the German invasion and a significant omission. The total number of Russians killed during the war was about seven million at most, not 20 million. The "scorched earth" policy was started and carried out by the Russians themselves, not the Germans. The *whole purpose* was to starve the German troops—see Alan Clark's massive tome *BARBAROSSA* in this regard and a number of "revisionist" article by Henry Elmer Barnes, A.J.P. Taylor, and Charles Callan Tansill. I might add, parenthetically in this regard, that WW II revisionism and *any sort* of revisionism in regard to Nazi Germany or fascism seems to be verboten in both "libertarian" and "conservative" publications. Particularly the notorious, undocumented falsehood about the "gassing of six million Jews"—see in this connection about a half dozen books by the late Paul Rossinier, a French leftist who was in the Dachau and Buchenwald camps, among others. Also, Dr. James J. Martin, leading libertarian-anarcho-capitalist historian and author of the 2 volume magnus opus of WW II "revisionism" *AMERICAN LIBERALISM AND WORLD POLITICS 1931-41* (Devin-Adair, 1965), is a leading authority in this regard.

But back to Hospers: he "forgot" to mention that an estimated 10-15 million Russians fled the Soviet Union when Hitler invaded and that 2-5 million of these Ukrainians, Georgians, Latvians, Estonians, eastern Poles, Lithuanians, and 'greater' Russians were shipped back forcibly to Russia after WW II via Eisenhower's infamous "Operation Keelhaul"—see book of the same name by Julius Epstein (Devin-Adair, 1971).

Once again, funny *REASON* has never discussed this. It was only the refusal of the Germans to arm and encourage anti-Soviet Russians that permitted the communists to survive. Needless to say, nothing of the sort was remotely indicated by Dr. Hosper's superficial and largely erroneous comments on "the" war.

I think the one-sided "Women's Lib" issue—particularly the glossing over of the statist "Equal Rights" amendment by Lynn Kinsky—and the rather disappointing Branden interview—the lack of critical questions asked—have proven *REASON* an extreme disappointment to date. I hope the magazine improves and tries to present *two* sides when discussing a controversial issue but on the performance to date I see *no reason* to believe that it will.

The venomous Machan review of the Tannehill book as contrasted with his fawning on that cheap little "objectivist" kindergarten primer by Lepanto serve as yet another illustration of the unreasonable approach of your publication.

Michael Paul Hardesty
Bethesda, Maryland

REPLY FROM DR. HOSPERS:

I agree with most of the allegations in your letter to *REASON*. In fact, I have myself restated them in my recent book, *LIBERTARIANISM*.

You mention the millions of people executed by the Chinese communist regime. Correct. See page 402 of *LIBERTARIANISM*.

You mention the massacres on a large scale conducted in the Soviet Union. Correct. See pages 29-36, 255-64, and 394-98 of *LIBERTARIANISM*.

You mention how much blacker the Soviet record is than, e.g., Rhodesia. Correct. See pages 406-10 of *LIBERTARIANISM*.

Virtually all of your other points are paralleled by similar passages in my book. Thus, it is not necessary to remind me of atrocities by totalitarian nations. I am by no means unaware of them.

Nor, in my opinion, is it necessary to remind the readers of *REASON*. That is why my article contains very little reference to all this. My book contained many attacks on the Soviet *government*; my article is a first-hand report on certain aspects of life in the Soviet Union today, particularly the nature of its *people*. In the article I restricted myself pretty much (though not entirely) to what I myself *observed*. Nor were my observations unusual: any of the other 120 people who toured Siberia and European Russia with me would attest to the same things I said. It is true that there were a number of

surprises in these observations—things which I myself would not have predicted beforehand that I would see. What surprised me most of all was the degree to which many citizens of the Soviet Union approve of the very regime that was dominating and regimenting their lives. "How can you praise the system that is exerting a stranglehold over your life?" is the question that always came to mind.

And yet it is true: the majority of Soviet citizens take much the same attitude toward the rebels against their regime as the American middle class takes toward campus demonstrators. It is true, for example, that they admire Krushchev—perhaps because they identified with him as a "jolly peasant" just as much as because he was mainly responsible for the proliferation of consumer goods after the Stalin era. And their admiration for him (at least compared with other Soviet leaders) may well explain why those leaders didn't dare give him a state funeral and hushed up the news of his death. It is also true that in anything having to do with "metal hardware"—from guns to plans to cutlery—they are way ahead of U.S. technology (which was attested to by American experts, not Soviet propaganda) and this too was a surprise, whereas the shoddy nature of Soviet building was no surprise.

But surely it is important (and not a "whitewash" as you call it) to state these things; in the event of a future military confrontation with the Soviet Union, it is surely important to know the truth about what we would face and not to cherish fond *illusions*. That a statist society could generate such technological excellence may contradict some theories of what can and cannot occur in totalitarian nations; but I found it necessary to report the facts and let the theories fall where they may. After all, I only reported what any candid observer who has been there for any length of time has seen for himself; I do not choose to distort these facts to reinforce the theories of those who have not been there.

John Hospers
Los Angeles, Calif.

OPEN LETTER TO BRANDEN

I finally found time, over the New Year's Holiday, to read the interview you gave to the staff of *REASON*, which was published in its October 1971 issue. I agree with the editors that you were unusually candid in your responses, and I am delighted that you so clearly repudiated some of Ayn Rand's dogmatic and absolutistic thinking. Just as you have now outdated some of your views of her in your book, *WHO IS AYN RAND?*, you have probably also outdated some of my views of your views in my book, *IS OBJECTIVISM A RELIGION?* I think you'll have to admit that, considering that I did not know of most of the differences that were developing between you and Ayn Rand when I wrote this book, I was unusually perceptive in pinpointing the extremely authoritarian philosophy of Ayn Rand and Objectivism, which you have now nicely confirmed, citing chapter and verse that were at the time unknown to me. I am delighted to see that you have disowned her authoritarian aspects, and shall try to distinguish carefully between the two of you in my future references to Objectivism.

I naturally disagree with your comments on my views and work in the interview, since as you predict, I would deny that my approach is basically authoritarian. Authoritative, yes; but authoritarian, hardly! I quite agree with you, however, that I practice a type of behavior-modification therapy—specifically, as I have acknowledged in recent writings, cognitive-behavior therapy. On your side, I am somewhat surprised that you find Fritz Perls' approach so congenial to your thinking; since, although it has a good smidgeon of individualism in its philosophy and is behavior-oriented in its active-directive methods, it is perhaps the leading anti-intellectual factor in psychotherapy today. I would have thought that you would largely get to emotions through thinking, rather than the reverse. And I am not sure whether you are (unawarely!) conforming to the California *mishigas* (and national hysteria) about the primacy of emotions or whether you are trying to save Reichian, Gestalt, and primal therapy from a fate worse than death—that is, from sanity—by tying them to some hard-headed thinking. We shall see!

Anyway, congratulations on your almost-complete divorce from Ayn Rand. Now she can rule alone as the Supreme Goddess of Pure Reason!

Albert Ellis, Executive Director
Institute for Advanced Study in
Rational Psychotherapy
New York City, N.Y.

TV AND PATERNALISM

Being an aesthetician, I am deeply interested not only in the concretization but also the communication of ideas. For this reason, I found your comments ("Publisher's Notes" in *REASON*, November and December 1971) on the Efron/St. John views on the "Fairness Doctrine" of the FCC (as aired on the Advocates TV show, November 1971) and on Miss Efron's recent book *THE NEWS TWISTERS* to be of considerable significance to me. I largely agreed with the conclusions you reached but was disappointed that you did not explicitly challenge Miss Efron's spurious politico-economic argument from monopoly. You did, however, identify the proper course to take, namely, to urge the abolition of the FCC and of government regulation over communications, in general; and for this, I applaud you.

Briefly, Miss Efron's error is a failure to recognize that the network "monopoly" over TV news is *not* a monopoly over *all media* news coverage. People *can* get unbiased news on a national level from *some* available media (e.g., newspapers, magazines, radio); even more important, they do have accessible to them the viewpoints of "conservative" and "libertarian" people, too. The fact that they can't (in most areas) get it from TV is truly unfortunate—no one hates Libs more than yours truly—but it is irrelevant in terms of a bona fide monopoly argument. Note that the situation here is very similar to that involving nickel vs. other materials (see *CAPITALISM; THE UNKNOWN IDEAL*, p. 75, paperback, where Branden writes on monopolies). TV news, that is, is only *relatively* preferable to the other media offerings.

Also note that Miss Efron hesitantly offered another argument by implication: since most people watch TV to get their news (because of strong psychological advantages TV enjoys over other media), and since most people are "helplessly, unwittingly programmed" with leftist bias (because they are too stupid to recognize it and turn to another medium or put pressure on the networks to improve), then we must *protect* them and invoke government regulatory power (viz., the FCC's "Fairness (sic) Doctrine." Now this, I assert, is a very arrogantly, intellectualist, paternalist position. Disappointingly, but not surprisingly, no one on the Advocates program pushed her to an explicit recognition of this. It certainly would have been awkward for either "liberal" or "conservative" to explicitly name and denounce paternalism! Not so for us consistent libertarians.

Roger E. Bissell
Nashville, Tenn.

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PERSONALS

FEMALE READER of *REASON* magazine would like simply to *meet a real* man. Is there such a creature? Please write Box AA in care of this magazine.

IF THERE ARE ANY readers in the vicinity of Houston, Texas, who would speculate on making my acquaintance, I would be very interested in meeting same. Aside from libertarian/Objectivist philosophy & economics, interests include: classical & romantic music, electronic music systems; digital computer design, programming & applications; in general the translation of science fiction into technological fact. Contact: Carl T. Helmers, Jr. Tel: (713) 488-6451, 17825 Kings Park Lane No. 619, Houston, Texas 77058.

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TO READERS WITH MUSICAL TASTES: How about a Romantic musical Rennaissance to accompany & celebrate the philosophical one? I have plenty of ideas re experimental musical instruments for use with new compositions or old. I would very much like to find a composer/artist capable of playing or creating Romantic concerti for my instruments. Contact: Carl T. Helmers, Jr., 17825 Kings Park Lane, Houston Texas 77058

I AM A SINGLE, 32 year old male interested in corresponding with a woman who is single, between 21 and 35 years old and who is also interested in libertarianism. Irl Heller, 6337 North Rosebury, Apt. 2, West Clayton, Missouri 63105.

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Byron Callas

Byron Callas
President

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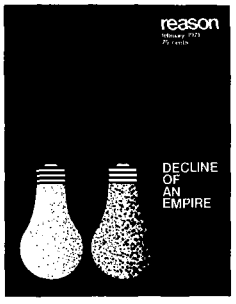
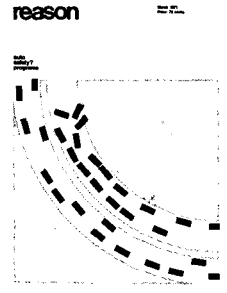


DECLINE OF AN EMPIRE 75¢

REASON's February 1971 issue features articles on the problems of business, both in league with and oppressed by the State. The issue contains Robert Poole's "The Power Crisis" on the FPC and impending power blackouts, R. A. Childs' revisionist "Big Business and the Rise of American Statism" (Part I); and the Erwin Strauss chronicle of offshore broadcasting, "When Pirates Ruled the Waves."



AUTO SAFETY (?) PROGRAMS 75¢

This issue features *CAR AND DRIVER*'s Brock Yates with an incisive criticism of the government's plan to force air-bags on automobile buyers, titled "Is Inflation on Good for You?" Also in the issue are Part II of R. A. Childs' "Big Business and the Rise of American Statism"; Lanny Friedlander's study of police efficiency, "The Gang that Couldn't Shoot Straight,"; and Tibor Machan's review of *THE MARKET FOR LIBERTY,* plus other articles and features.

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